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ABSTRACT

This document contains the proceedings of a hearing held on August 13, 1999, before the U.S. House of Representatives Subcommittee on Early Childhood, Youth, and Families. The hearing addressed school safety, discipline, and the Individuals with Disabilities Education Act (IDEA). Following opening remarks of the congressmen, the report includes the testimony of: (1) Julian Cope, Superintendent of Jasper County Public School System in Monticello, Georgia, who argues that IDEA creates a double standard for students with disabilities who commit offenses and severely limits the range of punishment that the building administrator can enact; (2) Sandra Griffin, Director of Special Services, Burke County Public Schools, Waynesboro, Georgia, who stresses the need to hold all students accountable; (3) Patricia E. Henchy, Principal of Burke County High School, Waynesboro, Georgia, who discusses the need for school safety; (4) Roberta Hatcher, Director of Special Education, Richmond County Board of Education, Augusta, Georgia, who discusses student support strategies; (5) Mary L. Oglesby, Chairman of the Richmond County Board of Education, Augusta, Georgia; and (6) Lamar Samples, Director of Risk Management/School Social Worker, Emanuel County Public School System, Swainsboro, Georgia. The appendices include the written statements of the congressmen and witnesses. (CR)

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SCHOOL SAFETY, DISCIPLINE, AND IDEA

ED 466 917

HEARING

BEFORE THE

SUBCOMMITTEE ON EARLY CHILDHOOD,
YOUTH AND FAMILIES

OF THE

COMMITTEE ON EDUCATION
AND THE WORKFORCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

HEARING HELD IN WAYNESBORO, GEORGIA
AUGUST 13, 1999

Serial No. 106–67

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FIELD HEARING ON SCHOOL SAFETY, DISCIPLINE, AND IDEA

Friday, August 13 1999
House of Representatives,
Subcommittee on Early Childhood, Youth
And Families
Committee on Education and the Workforce
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:42 a.m., in the Burke County High School, Waynesboro, Georgia, Hon. Charlie Norwood presiding.

Present: Representatives DeMint, Norwood and Scott.

Mr. Norwood. A quorum being present, the Subcommittee on Early Childhood, Youth and Families will now come to order.

Ladies and gentlemen, we welcome you all. This is an official hearing from the United States House of Representatives. All remarks will be recorded and printed in the official record which other members of the Education and Workforce Committee will be allowed to read and you may, without objection, submit written material for the Committee record.

The Subcommittee is meeting today to hear testimony on school safety and today we will have opening statements from Mr. Scott, Mr. DeMint, and myself. I will begin and we will alternate the statements between ourselves.

THE OPENING STATEMENT OF REPRESENTATIVE CHARLIE NORWOOD FROM THE STATE OF GEORGIA

Good morning to you and, and particularly we welcome the guests. As we all work in the people's House, we are delighted to be with the people and have your ideas about what we should and must do in terms of school safety. On behalf of the Subcommittee on Early Childhood, Youth and Families of the Committee on Education and the Workforce, I welcome everyone to today's hearing on school safety.

I am very pleased that Representative Jim DeMint of South Carolina and Representative Bobby Scott of Virginia, both members of the Subcommittee, have joined me this morning. I am particularly pleased to see so many people here today and who are interested in this issue.

As the school year is about to begin, in fact, classes here at Burke County High School start on Monday, we are reminded of the tragic school shootings of the past few years. These school shootings challenge us all to question if our system is doing all that it can to ensure the safety of our students and teachers while in school. Today's hearing takes one step toward improving school safety. Additionally, we will use legislation such as the Safe and Drug Free Schools, the Communities Act. and the Juvenile Crime Control and Delinquency Prevention Act, which is currently being considered by Congress, to help youth, schools and communities prevent violence.

When I speak with to teachers, principals, and school superintendents here in Burke County and in other counties of the 10th District, school safety and discipline are their greatest topics of concern. They are very concerned for the safety of their students in the classroom. And they are very specific about one of the ways we could help them improve school safety. They need to be able to have a consistent policy for disciplining children bringing weapons to school.

Current federal law requires that students who bring a gun to school be suspended from school for a year. We rightly have a zero tolerance policy for guns and weapons in our schools. However, for disabled children, that rule does not apply. A disabled student receives preferential treatment when it comes to bringing weapons to school.

I have an amendment, included in the Juvenile Justice bill currently in conference, that will change federal discipline requirements. That amendment passed the House of Representatives with well over 300 votes. The amendment would allow schools to apply a consistent discipline policy to students who bring a weapon to school. This amendment requires that any student who brings a weapon to school be expelled for one year. Yet it still allows schools to provide alternatives to students, including educational services, if the local school district decides to do so.

We need to make sure that our teachers and students are protected. We need to ensure that our children, disabled and non-disabled, have a safe learning environment at their schools. Learning itself will soon become a casualty if we do not do this.

I have asked today's witnesses to share with the Subcommittee their experiences and views on effective school discipline. The witnesses will explain how they approach discipline in their schools and any problems they face in appropriately and successfully establishing a well-disciplined school environment.

I am looking forward to today's testimony and now turn to my colleagues for any opening statements they may wish to make.

And I again want to introduce to you Representative Bobby Scott, who has been kind enough to come all the way down from Virginia. He is a great participant in this Subcommittee and knows a great deal about this subject and I think we are very fortunate to have Bobby here. To tell you the truth, of all the Democrats that we could have invited, Bobby is my favorite one on that whole side over there. So we are very pleased to have Bobby participate in this field hearing with us.

See Appendix A For The Written Opening Statement Of Representative Charlie Norwood From The State Of Georgia

Representative Scott.

THE OPENING STATEMENT OF REPRESENTATIVE BOBBY SCOTT FROM THE STATE OF VIRGINIA

Mr. Scott. Thank you, Charlie, and as I indicated at the last hearing when you said that, I hope my Democratic friends do not find out that I am your favorite, and I will not tell your Republican friends what you said.

I am pleased to join Congressmen Norwood and DeMint in Waynesboro this morning. First of all, Dr. Norwood is an extremely valuable and important member of the Education and Workforce Committee. He has used his background as a dentist not only in education but also on the issue of health care. That is one of the most controversial and contentious issues before us today, considering Medicare, considering HMO legislation. And his leadership has been invaluable in that debate.

I am also pleased to join Congressman DeMint from South Carolina, who has shown in just a few months that he has significant leadership qualities. We serve together on the Juvenile Justice Conference Committee. Usually appointments to conference committees are based on seniority. His appointment to that conference committee is a recognition of his leadership on that issue and I look forward to working with him not only in juvenile justice but also many other areas.

The topic of today's hearing, school safety and discipline, is clearly one that has captured the minds of the American public. There are certain cities that you can mention such as Littleton, Colorado, Conyers, Georgia, and West Paducah, Kentucky, where just the mention of the city points out the problems that we have had in recent history. Our schools and communities need to be safe for our children whether they are in the class or in the park, in the mall or at a business.

And we all know that education is the best defense against crime. We know the strong correlation between education and crime. Those who do not get a decent education are more likely to commit crimes. For example, the studies have shown that over 80 percent of our prisoners today are those that are high school dropouts. We know that school discipline is an important element to a good education. Today, we will discuss ways to improve school discipline.

One issue that Dr. Norwood mentioned, Individuals with Disabilities Act, has come under attack because after years of discussion we concluded that we ought to provide disabled children with a free and appropriate education, even when they are being disciplined. Some have misinterpreted the prohibition against cessation of services to mean that you cannot discipline the children. That is not true, you can clearly remove them from the classroom. The only requirement is that you have to continue the educational services. Those services can take place in another classroom, in another school, at home or even in prison. The idea that you would allow the school systems to discontinue education, I think violates the entire principle of the reason we have Individuals with Disabilities Act to begin with.

The fact is that over 20 years ago, disabled students were not receiving any education and if we allow the option to provide services, that does not provide any help at all to those students. If we want a completely equal system, it would make more sense to provide an equal situation for all students; that is, any student kicked out of class ought to be provided continued education because you are not helping the situation by moving the problem from one place to another. A child that brings a gun to school, if they are not in school, still has the gun somewhere in the community and when they come back at the end of the year, they are no better off. They are worse off than they were to begin with.

So we need to address this policy and how we can best deal with discipline problems and how we can discipline students in such a way that the public can benefit.

We will also hopefully discuss other strategies in dealing with school discipline. We know that with disabled students, for example, in Iowa when they came in with additional psychological services, that the discipline problems and the need to take students out of the classroom, that need was reduced from 220 incidences down to zero when they gave teachers the skills to deal with disabled students.

Alternative schools may be helpful, other strategies, we would like to see how we are doing with Safe and Drug Free Schools Act and what that money is being used for. But this is a very important hearing today and I thank Dr. Norwood for holding it here in his district and look forward to the testimony of the witnesses.

See Appendix B For The Written Opening Statement Of Representative Bobby Scott From The State Of Virginia

Mr. Norwood. Thank you very much, Bobby.

And now I would like to turn to my colleague from South Carolina, Congressman DeMint, who has been in Congress for eight months and clearly has exhibited tremendous leadership capacities and, Jim, I appreciate very much you coming to Burke County, Georgia today.

Mr. DeMint. Thank you, Congressman Norwood. And I am new in Congress and I have to say that this is probably one of the most important things that we have done. In Washington we talk to each other a lot, we talk a lot about theories and ideas and we are here today to listen to the people who are actually on the ground floor doing the things that many times we legislate.

One of the things that concerns me most about legislation in Washington is the unintended consequences of things that are very often well motivated. I think that appears to be very much the case with the discipline in schools and so we really want to know from all of you today what are your ideas for the problems we have now and how to solve it.

And I particularly appreciate Congressman Norwood allowing me to be a part of this. For me as a freshman member of Congress, he has been one that I can look and see that he is fighting for the ideas that he believes in a way that sets a good example for the rest of us, and it is good to see how he and Congressman Scott work together even though they often disagree. They can often come to a better solution as they listen to each other. So we have got a good team of listeners here today and I look forward to your comments.

I have four children, two are in college and two started back to high school this week. And I frankly am concerned about their safety. I am concerned about schools having the authority, the means and the resources to create an orderly and disciplined environment. I have seen the frustration that builds in my children when they are in a classroom or other school setting where it is out of control and a few students seem to be controlling that situation and the teachers seem hesitant to respond.

In my conversations with teachers, I have heard so often that while they are told certain things are within their authority, they are so unsure of what might happen. They are afraid of lawsuits, being challenged by parents and the press or by school boards. There is just so much uncertainty, that there is not a feeling of authority that they have or even the principals have to create that orderly and disciplined environment. Part of that appears to be the exceptions that are made for students, not only because of disabilities. The exceptions tend to tear down the entire rule and to discredit the authority figures.

So as I look from the outside in, I see the need to turn more responsibility as well as the authority over to teachers and principals and to exempt them from frivolous lawsuits when they implement common sense disciplinary procedures. We are particularly interested today in the exceptions that may be made because of federal rules that we might need to change.

So again, we are here to listen, not to legislate today, and hopefully you will all send us back to Washington with a clearer picture of what works, what does not, and what we need to change to make it work better here in this school and other schools around this country.

Thank you very much, Mr. Chairman.

Mr. Norwood. Thank you, Jimmy, very much.

And now I would like to introduce to you our panel of witnesses. All of them have a very impressive and long resume; however, I am going to maximize the time we have to hear from them and I will keep these introductions brief and I will introduce in alphabetical order.

First is Dr. Julian Cope. Dr. Cope is Superintendent of Schools for the Jasper County Board of Education. As superintendent, he has implemented peer counseling at the Jasper County High School. He has also presented discipline strategies to school administrators in many areas.

Ms. Sandra Griffin. Ms. Griffin is the Director of Special Services for the Burke County Public Schools. She has experience as a general education teacher and special education teacher. She also has worked in gifted and talented education programs.

Ms. Patricia Henchy. Ms. Henchy is Principal at Burke County High School. She has 27 years of education experience with 14 years of special education experience.

Next is Ms. Roberta Hatcher. She is the Director of Special Education Department for the Richmond County Board of Education. She has extensive teaching experience in special education. She has served and continues to serve on several state and local program improvement committees.

Next is Ms. Mary Oglesby. Mary is a crisis management specialist and serves as President of the Richmond County Board of Education and has for years worked diligently on behalf of all of our children.

Mr. Lamar Samples is the Director of Risk Management for the Emanuel County Public School System. In this position he is the in-house consultant for school safety. He is in charge of prevention, intervention and educational services for students who violate school discipline policy. He also has a solid background in classroom teaching experience.

Now to our panel, let me remind you that under our Committee rules, you must limit your oral statements to five minutes, but your entire statement will be presented for the record. We do not have the lights up today, so we are going to be a little informal and I am not going to slam down the gavel if you need to go a little longer. We will allow the entire panel to testify before questioning the witnesses. And I want to sincerely thank all of you for taking time out of your busy lives to be here to help educate a Congress that needs educating.

If we could start with Dr. Cope.

Dr. Cope. Mr. Scott, Mr. DeMint, Congressman Norwood, thank you for allowing me the privilege and opportunity to address . . .

Mr. Norwood. Julian, pull that mic to you just a little closer.

STATEMENT OF DR. JULIAN COPE, SUPERINTENDENT, JASPER COUNTY PUBLIC SCHOOL SYSTEM, MONTICELLO, GEORGIA

Dr. Cope. I will start all over again. Mr. Scott, Mr. DeMint, Congressman Norwood, thank you for allowing me the privilege and opportunity to address the Subcommittee on Early Childhood, Youth and Families. The discipline and safety of our students is one of my top priorities at Jasper County Schools and in my position as School Superintendent. Without discipline, students cannot learn and teachers simply cannot teach. I am pleased to support your efforts to increase the discipline and safety of our schools through your amendments to the Individuals with Disabilities Act, IDEA.

Jasper County is a rural school district in middle Georgia serving approximately 2000 students in grades pre-K through 12. The local board of education endorses a wide variety of discipline techniques that focus on prevention, intervention, and consequences/punishments for student misbehavior. In grades K through 5, an emphasis is placed on conflict resolution, early intervention and early identification of disruptive youth. These efforts are accomplished through the use of two counselors who provide individual, group counseling and classroom guidance at both the primary and elementary schools. In addition, two part time school psychologists work with the Student Support Team in the early identification and intervention of students with possible behavioral, emotional or attention disorders. In grades 3 through 12, a special emphasis is placed on the use of peer mediation, which is facilitated by the school counselors at each school. Additional intervention strategies include after-school programs, which concentrate on the remediation of at-risk and academically delayed students. Furthermore, the local board of education allows school facilities to be used after school and this is sponsored by 4H and the local mental health STARS program.

Other intervention efforts in the past have included the employment of a safe school specialist who provided mediation and conflict resolution to students at the middle and high schools. Recently, our prevention efforts have shifted, and the local board of education is applying for COPS in Schools grant to fund a resource officer who will serve students in the alternative school and at the local middle and high school. The resource officer will conduct classes in law-related education, drug and gang awareness, as well as offer additional security to the school climate. In addition to prevention, the local board has enacted and I personally have endorsed the use of many methods of punishment or consequences for disruptive behavior which include but are not limited to corporal punishment, after-school detention, in-school suspension, suspension, expulsion and alternative educational programming for students in grades 6 through 12.

Along with the interventions and discipline codes that been enacted locally, there are several impediments which interfere with the safety and consistency of discipline in our schools. Let me start by saying that I support the provision of a free and appropriate public education of all children, including children with disabilities. However, the law and regulations as they are written certainly create a double standard for disabled students who commit offenses and severely limit the range of punishment that the building administrator can enact.

Jasper County is currently following the provisions of the law which require functional behavioral assessments and behavior intervention plans for disabled students whose behaviors are significantly impacting their own learning or the learning of others. I feel that we should make an effort to try to understand and prevent and be proactive and aggressive in addressing behaviors of disabled students. Furthermore, all discipline of disabled students in Jasper County is done in accordance with their individual education plan, IEP, and the administrators consult with our special education director on a regular basis to ensure all due process is properly observed.

On the other hand, despite the recent changes in the regulatory language concerning discipline under the Reauthorization of IDEA 97, school districts are still limited in the disciplinary measures they can take in addressing a serious conduct violation, even if the violation is not a manifestation of the child's disability. Under the new regulations, if a student's behavior is not a manifestation of his/her disability and if a student is removed or suspended for more than 10 days, the regulatory language requires systems provide services to the student to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward the goals in the child's IEP. Therefore, the school district is still obligated to provide an education to a disabled student whose conduct was not related to his or her disability; when, on the other hand, a non-disabled student could be expelled permanently for the same offense.

The criminal courts rarely make exceptions according to a person's disability if a crime is committed. School systems should be afforded the same standard. Other restrictions include limited resources for alternative educational funding. Although the Georgia legislature allotted additional funding for alternative educational programs, our local program lost 15 percent of the funding for fiscal year 2000 it had received the previous years. This reduction in funding places further strains on local boards of education to provide resources to troubled youth, including students with disabilities who need programming outside of the regular school.

In closing, I want to applaud your efforts, especially Congressman Norwood, to support a safe and more disciplined school environment. It is my hope that the rest of the Subcommittee understands the imbalance and double standard of the current discipline standards under IDEA 97.

I thank you for your time and consideration and if you have any questions, I did bring my special education director, Mr. Mike Newton, to help field them. He is a specialist in his field and he is one of Georgia's finest educators and administrators in that field.

Thank you very much.

See Appendix C For The Written *Statement Of Dr. Julian Cope, Superintendent, Jasper County Public School System, Monticello, Georgia*

Mr. Norwood. Thank you, Dr. Cope, and we certainly look forward to having some questions after the panel continues.

Ms. Griffin, could we hear from you now, please?

STATEMENT OF SANDRA GRIFFIN, DIRECTOR OF SPECIAL SERVICES, BURKE COUNTY PUBLIC SCHOOLS, WAYNESBORO, GEORGIA

Ms. Griffin. Congressman Norwood, members of the Committee, thank you so much for allowing us an opportunity to meet with you today.

As a special educator for over 20 years, no issue has presented a greater challenge to me than that of discipline for disabled students. I agree wholeheartedly that we need flexibility in our approach to this issue. Yet I know from experience that most of the infractions we deal with on a daily basis in public schools, those that prevent special education teachers from teaching and students from learning, are committed by students with mild disabilities who are fully capable of discerning appropriate from inappropriate behavior. I believe we do a disservice to disabled students when we suggest that they all need separate rules of behavior.

On one hand, Congress charges educators with the responsibility of preparing disabled youngsters for post-secondary education or jobs. We are expected to practice inclusion and mainstreaming for disabled students and show a positive return on the vast amount of money invested by taxpayers in special education. On the other hand, we are impeded from teaching disabled students to be responsible for their behavior. When the consequences for their inappropriate behavior is different than that for non-disabled peers, we send the wrong message. These same students who are educated with a double standard regarding behavior are still expected to function in a society that allows no such distinction.

For example, when someone runs a traffic light in Waynesboro, Georgia, the police officer does not check first to see if the individual has a disability. The officer simply determines if the law has been broken and applies the consequences because possession of a driver's license carries with it a responsibility. In the workplace, employers make accommodations for disabilities as required under ADA, but employers still dismiss workers who do not comply with company guidelines for responsible behavior. Work ethics apply to all of us.

Certainly we have disabled students with significant cognitive deficits. We have severely autistic children and those with severe emotional problems who do not have the ability to understand or meet the expectations for appropriate behavior. We need to educate and protect these children, but in a setting that ensures the safety of these students and their classmates.

I am not the person with the answer to school safety. We would all agree it is an extremely complex issue with no easy answer. However, there are some things I do know. I know when a special education teacher in Burke County confides she is so afraid of one of her students she is keeping a journal ``in case something happens to me," to use her words, it is past time to do something. Especially when I have known that student for as long as he has been in school, I know he understands school rules, he knows the difference between right and wrong, he is capable of making choices and has no emotional problems. I know his behavior is volitional.

We must hold all students accountable, with no exceptions and no exemptions. Violent, disruptive students do not belong in school with my children or with yours. Some tragedies cannot be avoided no matter what our resolve when we live in a country of freedom. God willing, I will never have to face the loved one of a teacher or a student and say we knew that student was dangerous but there was nothing we could do because he was in special education, he had a right to education no matter what his behavior. Congress must give us the authority to remove dangerous special education students from classrooms. Representative Norwood's proposed IDEA amendment is vital to maintaining safe schools.

Today in the Burke County school system, special education students are given every reasonable opportunity to improve behavior. Our leadership at all levels is supportive and proactive in this endeavor. Functional behavioral assessments and behavior intervention plans are included in individual education plans. Manifestation determination committee meetings are convened for all special education students who are at risk of suspension for more than 10 days per school year. Teachers discuss information in student handbooks to make sure that every student knows expectations for behavior. Our school psychologists and counselors work with teachers on behavior intervention strategies and classroom management. When none of these things help, we need special education services in our alternative schools for disruptive students and we need to be able to remove dangerous students from the school setting.

I have known thousands of students with disabilities over the years. The majority are hard-working, ambitious, successful individuals who contribute to their school and grow up to be good and responsible citizens. Only a few prove disruptive to the learning environment and an even smaller number could be considered dangerous. It is a mistake when the few are denied appropriate consequences for their actions. When wrongful behavior is perpetrated, it is no longer taboo. The student in the next desk then considers it an option. We are irresponsible as adults if we allow that to happen.

Thank you for the opportunity to speak with you today on these important matters.

See Appendix D For The Written Statement Of Sandra Griffin, Director Of Special Services, Burke County Public Schools, Waynesboro, Georgia

Mr. Norwood. Thank you very much, Ms. Griffin, on your thoughtful testimony.

Could we hear now from Ms. Henchy?

STATEMENT OF PATRICIA E. HENCHY, PRINCIPAL, BURKE COUNTY HIGH SCHOOL, WAYNESBORO, GEORGIA

Ms. Henchy. Good morning. Good morning, Mr. Scott, Mr. Norwood and Mr. DeMint. I am Patricia Henchy, Principal of Burke County High School.

Burke County High School has a broad range of prevention strategies that are structured, consistent and fair. The prevention efforts depend upon the routine discipline structure within this school.

All students receive a student handbook which addresses student expectations, rewards, code of conduct, penalties and due process procedures. The student handbook of Burke County High School provides guidelines which are clear and concise. The handbook is covered the first week of school during five extended homeroom periods. In addition to the homeroom sessions, grade level orientations are conducted to review and answer questions.

Burke County High School provides a range of instructional alternatives for students who are disruptive in the regular school program. Those instructional alternatives include, but are not limited to, in-school suspension for designated periods or days, out of school suspension for designated time periods, referral to the alternative school or referral to tribunal.

Burke County High School has a proactive safety plan to counteract the growing incidences of violence evident in schools across the nation and to provide a safe learning environment for students, faculty and staff.

In reference to weapons, the board policy and code of conduct clearly states:

``A student shall not possess, handle or transmit a knife, razor, ice pick, machete, pistol, rifle, shotgun, pellet gun, explosives or any other object that could be considered a weapon or an instrument that could pose a danger to the health and safety of students, teachers or any other person on school property, at any school function or en route to and from school."

The consequences for a weapons violation include confiscation of the weapon, out of school suspension for 10 days, notification of the appropriate authorities and a referral to a tribunal. A student found guilty of a violation of this policy would be expelled from school for a minimum of one calendar year. This policy includes a provision allowing the superintendent and the board to modify the expulsion requirement on a case-by-case basis.

For the student with disabilities, the code of discipline procedures must be followed. During the tribunal phase, the diagnostic evaluation and the current individualized plan would be studied, reviewed and taken into consideration, as well as the policy allowing modification of expulsion based upon circumstances and facts that should be considered as well.

Burke County High School is a disciplined, safe and violence-free institution. The mission of this faculty and staff is to challenge students academically, to provide opportunities for effective oral and written communication, to promote a safe environment where students become responsible and productive members of this community, and to instill in the students a feeling of self-worth through their academic and extracurricular accomplishments.

With this school mission in mind, all students at Burke County High School have many avenues and opportunities to receive assistance and support to help them improve their behavior. Those opportunities include:

Availability of guidance and counseling services

Before and after school tutorial services

Conflict resolution opportunities

Student support teams

After school clubs and organizations

Athletic activities

Student, teacher and parent conferences

Student behavior contracts

Special privilege cards for academics and behavior

Student assistance programs

As well as a curriculum for character and value education, which is in developmental stages.

Gentlemen, in closing, if each school in Georgia is to be disciplined, safe and violence-free so that academic achievement of students can be the foundation upon which the school is built, then a student with a disability who violates the weapons in school policy should be punished. The need for school safety far outweighs the individual needs of the special education student. Does a weapon in the hands of a special education student hurt less?

Thank you so much for your invitation and I welcome your questions.

See Appendix E For The Written Statement Of Patricia E. Henchy, Principal, Burke County High School, Waynesboro, Georgia

Mr. Norwood. Thank you very much, Ms. Henchy.

Roberta, apparently we cannot get the alphabet right, you should have been next, but let us hear from Ms. Hatcher.

STATEMENT OF ROBERTA HATCHER, DIRECTOR OF SPECIAL EDUCATION, RICHMOND COUNTY BOARD OF EDUCATION, AUGUSTA, GEORGIA

Ms. Hatcher. Congressman Norwood, Committee members, good morning. I appreciate the opportunity for our system, the Richmond County Board of Education, Augusta, Georgia, to testify before this illustrious Subcommittee on Early Childhood, Youth and Families on the issues of school safety, student discipline and the Individuals with Disabilities Education Act, commonly referred to as IDEA.

Richmond County is strongly committed to ensuring a safe learning environment for all of our students. We have many system supports to protect our students. The list is not exhaustive, but some are:

Increased random metal detector searches

Drug dog searches of vehicles

Cell phones with published hotline numbers assigned to Administrators

On-call access to bomb-detection K-9 in conjunction with Columbia County's Sheriff's Office

Walk-through building familiarization of schools by Richmond County Sheriff Department Special Weapons and Tactics Team

Floor plans of all schools provided to Richmond County Sheriff Department Special Weapons and Tactics Team

Final working draft to the Situation, Training and Response Textbook manuals

Sponsorship of Tactical Response Instructor Certification course

Continued emphasis on Community Policing and maintaining a friendly working environment with our students

School uniforms for elementary and middle schools and easier to follow and easier to enforce dress codes for all students

Additional hand-held metal detectors distributed to our high schools and middle schools in excess of 100

And required student photo identification for high school students.

Our schools have a strong support system to maintain discipline and appropriately sanction students who do not follow school rules. These measures include a Code of Conduct for all students including those with disabilities, which is distributed to students, parents and school personnel. These measures include:

Classroom and school-wide discipline plans

Character Education Curriculum

Crisis Intervention Plan and Teams

Student support teams

Use of school counselors, school psychologists

Peer mediation training

Functional Behavior analysis/behavior intervention plan

A pilot program whereby the student support team uses the behavior intervention plan for any student who demonstrates a significant behavior problem

Program alternative to school suspension for fourth graders and fifth graders

Alternative school for middle and secondary students

Reduced class size

A strong dress code

Full time police officers in middle and high schools

Communities in Schools program

Family Connection program

In-school suspension program

Detention/time-out procedures per the individualized education plan and parental involvement

Disciplinary tribunal hearings

And expulsion.

However, discipline for students with disabilities must address the behavior as a part of providing a free, appropriate public education. This IDEA requirement often creates a double standard particularly in regard to discipline for students with mild disabilities. Although it is important for school officials to consider the civil rights of all students, there needs to be some flexibility in regard to those students who have severe cognitive or emotional impairments, which limits their ability to make rational decisions and judgments.

In addition to the perceived dual system of discipline, other impediments to the creation of safe schools are the lack of sufficient funding for IDEA and the need for additional funding in general. When federally mandated programs such as IDEA are fully funded, our school system will be able to hire additional counselors to allow for increased one-on-one contact with troubled children, hire additional teaching staff for alternative educational settings, increase staff and teacher and parent training in the area of discipline, and finally, provide additional teachers to reduce class size and thus lessen the likelihood of severe discipline problems.

Please do not make this an exercise in public relations. While our children probably do not know it yet, they are counting on you to make a difference in their lives.

We have all heard politicians and education pundits promise to improve education. Before you is the opportunity to make a significant difference in the lives of America's children.

I promise the investment you make in these areas will pay off beyond your wildest dreams.

I know, and I believe that Congressman Norwood will agree, that the students in Richmond County Public Schools are worth every penny.

Thank you for your attention.

See Appendix F For The Written Statement Of Roberta Hatcher, Director Of Special Education, Richmond County Board Of Education, Augusta, Georgia

Mr. Norwood. Thank you, Ms. Hatcher, very much.

Ms. Oglesby, could we hear from you next?

STATEMENT OF MARY L. OGLESBY, CHAIRMAN OF THE BOARD, RICHMOND COUNTY BOARD OF EDUCATION, AUGUSTA, GEORGIA

Ms. Oglesby. Thank you. I need to clarify, I am a specialist who works with physically and abused children, previously non-management crisis specialist. I also need to give a disclaimer that my views may not necessarily agree with the total view of the Board.

So along with that, adding to what Ms. Hatcher has stated . . .

Mr. Norwood. Though you are chairman of the board, there might be some disagreement on the board. Well, the chairman rules, you know that.

Ms. Oglesby. I would just like to go ahead and give you some different statistical data that I have received since yesterday, they have been trying to gather this information.

In the weapons violations, we had a total of 98 and of those 98, the special eds were 18. Those 18 were sent to the alternative school and the remainder were suspended. Of those 18, there were several that had brought knives, razor blades, BB guns, guns. Of those 18, two were involved in incarceration, one is now in incarceration for a murder during the summer. And while that student was at the alternative center, it was also a dangerous situation for the teacher and some students and faculty.

We are fortunate that in our alternative center, it is a smaller situation, they are now probably about 98 students. Our principal from the alternative center is here. Would you please stand? And she could probably give you more information if you would like.

The situation that this sets up for double standardization is totally unfair. As they were saying, a bullet hurts or a wound hurts no matter who pulls the trigger or sticks the knife.

The other thing I would like to contribute to this is that of the approximately 35,000 students we only have 2900 special education students. Now this does not include Chapter 1, is what I was told. With the number of students we have, we only get funding . . . we get funding of $8,713,365 from the state. We spent $12,181,424 for these students. And when you compare the numbers on that, that somehow does not seem fair. Not included in this money again is the Title 1 money. When we are dealing with special education children, we have to take the time to assess the situation, we have to take the time to make sure that provisions are made to see that they are given the individualized attention.

Our teachers and our faculty, as they were saying previously, are fearful of the double standards for the situations that you had talked about previously with the students. We have several suits that have been brought against us. Fortunately we have an excellent attorney who can deal with these situations, but it takes a lot of time and money to take care of this.

We also feel that when dealing with special education students, there can be different modalities in dealing with crisis interventions, in dealing with the special situations that have to be dealt with as far as their personal issues or as far as their understanding of what goes on. In dealing with abused and neglected children, I have found in the past that the modalities we use in teaching them about high risk decision-making and responsibility for decisions has helped them to realize that even though someone attacks them or did some wrongdoing to them does not give them the right to go ahead and attack that person back. In these situations we can do that with the special education children as well.

Now I understand that there needs to be flexibility within each situation because each case is different. And in any situation, whether it is in the schools, in the workforce or anywhere, we cannot guarantee anything. There are no real certainties about a total guarantee, but we certainly can try to prevent and maintain a situation that is a lot better, that we can back up the teacher and the principal and their testimony and their witness to what is going on in the classroom is really of more importance than mine or anyone else's. They are the ones that have to work on a day-to-day basis with these students, they are the ones that have to work on a day-to-day basis in presenting an educational format that is fair to all the students and not just some of the students. And in doing this, we need to make sure that there is definitely fairness for those students that do not have special needs, that they are also getting those same kind of requirements in education.

The format that has been given for special education students is usually separated and the breakdown for student/teacher ratio is very concrete. We want to do these things because we do feel that all students need to be educated, but we need to look at the ratio and make sure that the other students are receiving the same benefit for the dollar.

Thank you.

See Appendix G For The Written Statement Of Mary L. Oglesby, Chairman Of The Board, Richmond County Board Of Education, Augusta, Georgia

Mr. Norwood. Ms. Oglesby, thank you very much.

And Mr. Samples thanks for coming over from Emanuel County and we would like to hear from you now please.

STATEMENT OF LAMAR SAMPLES, DIRECTOR OF RISK MANAGEMENT/SCHOOL SOCIAL WORKER, EMANUEL COUNTY PUBLIC SCHOOL SYSTEM

Mr. Samples. Mr. Chairman and members of the Subcommittee, I would like to thank you for the opportunity to speak to these critical but very difficult issues in providing a free, appropriate public education for all students in our public schools. We in the Emanuel County School System strive diligently to provide the best educational opportunity for all students in the least restrictive environment. While the May 1997 Reauthorization of the Individuals with Disabilities Education Act on the surface appeared to be less cumbersome and to provide educators with less restrictive options in the discipline of students with disabilities, detailed analysis of the total document reveals language that is very restrictive and extremely complex.

In the Emanuel County Public Schools, teachers and administrators are encouraged to implement strategies for discipline for inappropriate behavior at the lowest practical level and with the least interruption to the students' education experience. For students who continue to be disruptive or commit serious offenses of the discipline codes, other discipline options are used. These options include, but are not limited to, those that I have listed below on the sheet and I believe you have before you. I will not itemize those as they are redundant and most of them have already been mentioned.

Due process is carefully followed in all these strategies. Any long-term suspension or expulsion carries a right of appeal. Serious discipline situations are reviewed for due process and compliance with policies, state and federal laws and regulations.

The above strategies work very well, resulting in very few students ever reaching the point of being denied an education because of their behavior. Incidents involving weapons on school property or at school events generally result in long-term suspension or expulsion for one year. In some situations, these students are given the option of applying for enrollment in the alternative school program.

The process works very well until we have to ask if the student is an IDEA or 504 student. The very question implies some kind of special treatment or discrimination against someone, especially when the behavior is not a manifestation of the disability. Students with disabilities are often just as dangerous as students without disabilities.

The reauthorization of IDEA provides that if the behavior is not a manifestation of the disability, the student can be disciplined as any other student. However, language was added that says the student must receive services. The services must enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the individual education plan. I shudder to think how that may be interpreted in the courts.

The due process required for discipline of IDEA students who may be a serious danger to themselves or others is very complex. As long as the parent is cooperative, there can usually be a reasonable solution. If the parent is uncooperative, the burden of proof shifts to the system and requires a more than preponderance of the evidence that maintaining a child in the current placement is substantially likely to result in injury to self or others. For violent behavior and weapons offenses, the system personnel need the right to use their judgment under the same due process rights and rights of appeal as any other student, regardless of the manifestation of disability.

Emanuel County Schools in collaboration with other agencies provides many services to assist students and parents in the students' educational process. And again, for the sake of time and redundancy, I will not go through these, but we have a strong community effort, many activities, many resources come to bear working with children before they are in trouble, during the process that they are in trouble and following up even after, as you will see if you will read this list that I have before you.

Yet to be seen is how the courts will interpret this complex and confusing law and the accompanying regulations. I have enclosed a series of four charts prepared for a school board attorney seminar held May 21, 1999 at Mercer University. It is an attachment and I invite you to look at that attachment. This is a major attempt to simplify the new IDEA regulations. It is the best attempt frankly that I have seen so far.

After you have read the charts, imagine yourself in the position of a school site administrator whose job it is to improve the education process, improve test scores, provide a free, appropriate education for all students, and comply with the myriad of laws and regulations impacting education today as well as maintaining a safe school environment. Treating violent IDEA/504 students differently from other students can lead to confusion, indecisiveness and reluctance to act for fear of being found liable for the action taken, even though acting in good faith.

We in the Emanuel County School System appreciate your efforts in addressing this critical subject that can greatly impact school safety and academic progress for all students.

Thank you.

See Appendix H For The Written Statement Of Lamar Samples, Director Of Risk Management/School Social Worker, Emanuel County Public School System

Mr. Norwood. I thank all the panel for their testimony and I would remind the members that Committee Rule 2 imposes a five-minute limit on questions. I would now like to begin and ask a few questions of the panel and then we will go to Mr. Scott and then Mr. DeMint.

Part of the hearing here is that I wanted the members of our Committee to understand that I just did not wake up one morning thinking we needed to change this law and have zero tolerance for weapons in our schools. That amendment developed after two or three years of talking to many of you, superintendents, teachers, principals all around the Tenth District of Georgia, pointing out to me the great difficulties that you were having in terms of discipline and in particular with weapons for disabled students.

I would like to ask all of you to comment, if you would, for just a minute, on the fact that a disabled student may be a Downs Syndrome child or it just simply may be a child that is slow in reading. And do you run into and have experiences with children in your schools who take advantage of the law that Congress has written in order to sort of get away with things, knowing that you actually, if they are under IDEA, you have no real authority to discipline them in any way and they use that then to their benefit, knowing that they can do generally whatever they want to do.

Dr. Cope, would you comment on that?

Dr. Cope. I am going to call Mike to talk about that.

Mr. Norwood. All right, that is great.

Mr. Newton. It has been our experience in Jasper County that, you know, I feel like that students generally you do not have to tell them, they know they are under IEPs, they know they are special education students. I do not think they are fully aware that they are discipline distinctioned but it does not take them long to figure it out.

Most of the children that we deal with that have discipline problems of a significant nature are those children that have milder disabilities and I feel like they are fully aware of what the consequences of their behavior should be.

So I really feel like that there is the double standard there. I think students are aware. I do not think parents are going out and telling their children that hey, you know, you do not have to follow the rules because you are under an IEP, but I think the children are fully aware that there is a double standard there with discipline.

Mr. Norwood. State your name and position clearly for the record, please.

Mr. Newton. I am sorry. My name is Mike Newton, N-e-w-t-o-n, and I am Special Education Director for Jasper County.

Mr. Norwood. Thank you, sir. Anyone else with to comment on a general analogy?

Ms. Griffin. I would like to comment on that.

By middle school and sometimes even earlier, students realize and understand the distinction. You have a situation where two students get in a fight and we have zero tolerance for that, for example at Burke County High School. The non-disabled student goes home for 10 days, the disabled student may go to in-school suspension or get whatever, we call it slap on the wrist. And those students know immediately, they understand. And then a couple of weeks later, they will look you in the eye and say you cannot do anything to me. So to answer your question; yes, there is a distinction.

Mr. Norwood. You know our amendment will not deal with that. It only deals with weapons.

Ms. Griffin. I understand that.

Mr. Norwood. Are you suggesting that we ought to look deeper into it?

Ms. Griffin. I am urging you to look deeper into that.

Mr. Norwood. So it is not just bringing a knife or a gun, it is the whole broad act of disrupting the school.

Ms. Griffin. It is that chronic disruption day after day, as I said earlier, that keeps teachers from teaching and students from learning. And it is not tolerated in the regular education classroom, so it should not be in the special education classroom.

Mr. Norwood. Any others? Mr. Samples.

Mr. Samples. Congressman, may I speak to that?

One thing that I notice is that in some of these cases, it is not a situation of suddenly a child wakes up one morning and decides to take a weapon to school. There has been a progressive period of violence over time and we are very restricted in dealing with that violence until the weapon comes. And that then is a problem. We need to be dealing with it much earlier to where we can try to make an impact before it reaches that state of an actual weapon being on campus or someone being severely injured.

We have strikings, we have deliberate kickings, we have deliberate hitting, and we have the deliberate throwing of things at others and injuring them. And yet these are not considered as serious, as I read the IDEA.

Mr. Norwood. So you are suggesting that a good first step is to have zero tolerance for weapons for anyone who attends your school? Should we continue discussing this as it relates to other behavioral problems as well?

Mr. Samples. Please do.

Mr. Norwood. Mr. Scott, I see my time already has elapsed and I would like to turn it over to you, sir.

Mr. Scott. Thank you, Mr. Chairman.

Let me get something on the record to begin with because we have had a lot of discussion about IDEA. Prior to IDEA, eight million children got no education at all, millions of others were not appropriately educated; many others were either dropped out or expelled without any services. And I just want to ask the superintendents or anybody else that would comment whether Individuals with Disabilities Act which requires you to educate disabled students, whether that is good legislation or not.

Ms. Hatcher. May I respond? My name is Roberta Hatcher.

I think that IDEA has a lot of good points. I started teaching in 1974, before IDEA. And I think that we need to realize what those good points are because, because of IDEA I believe we have identified some students who otherwise may not have been identified and I am certain that we are providing some services that students otherwise would not be receiving. However, I think we need to look very closely at the issues related to balancing schools in regard to students with disabilities. I do think that students must have limits and those limits must be enforced.

Mr. Scott. Well, if we did not have IDEA, is it not fair to say that a lot of children would not be getting an appropriate education?

Ms. Hatcher. I believe so, because with IDEA, there is a child find requirement and child find has brought about more involvement in terms of people in the school community as well as the general community in terms of looking for students with disabilities. We have a very active child find procedure in our county and we go the extra mile to identify students and locate the ones who may need service.

Mr. Scott. And I think Ms. Oglesby pointed out that if you are going to educate disabled students, it costs more.

Ms. Oglesby. Yes.

Ms. Hatcher. It does.

Mr. Scott. And as a matter of policy, we have decided that that is the appropriate thing to do, that everyone is entitled to a free and appropriate education and if it costs more, whether the school systems like it or not, we are going to educate disabled students.

Ms. Hatcher. Yes, sir.

Mr. Scott. I guess the question is whether that is a good policy or a bad policy. I view it as a good policy and if anyone wants to disagree, thinks it is a bad policy to require the education of disabled students even though it costs more, whether that is a good policy or a bad policy just generally.

Ms. Oglesby. Well, if you are going to mandate that, then you need to match it up with funds because, like I said, we only have 2900 students within our school system and yet it cost us $10,340,000 last year to fund, to give them those special services. So when you mandate these things, you need to take all those specifics in mind in dealing with that and also look to make sure that the resources that are available for those children, there are also matching funds to go to those other children that have other things that they need as well.

Mr. Scott. Well, I think you will have unanimous support on the question that we ought to be spending . . . the federal government ought to be putting more money into IDEA but if we view this as a civil right that all students are entitled to. We do not allow the public schools, for example, to decide to only educate white students, we require all students to be educated and the federal government did not send money to school systems in order to educate minority students as well as white students, they said you have got to educate everybody. We recognize that it costs more to educate everybody.

But let me ask a follow-up question and it goes to the general goal of what discipline is all about and whether expelling students without an education serves a constructive purpose because the students who bring a firearm or any other weapon to school, if they are kicked out for a year, they may disappear from the school system, but they do not disappear from society. Many of them will come back at the end of the year, and whether or not society is better off with these students receiving no educational services at all or whether or not those educational services when they have to be removed from the school system, from the regular classroom, whether or not it is appropriate to continue the education for the good of the school system and society.

Ms. Henchy. Mr. Scott, do you not think we should consider the educational rights of the regular population?

Mr. Scott. You remove them from the regular classroom. There is nothing in here that prohibits you from removing . . . for the safety of the other students, removing the student and disciplining them just like everybody else. The only requirement is that you have to maintain the expense of educating the child somewhere else, whether it is in an alternative classroom, an alternative school, in prison, at home. You have to continue the education because if you do not . . . does anybody have any studies to contradict the ones that show that when a disabled student is kicked out of school, they are much more likely to end up in prison?

Ms. Henchy. No, sir.

Mr. Samples. Could I address this general concept of what you are saying?

We agree that the student on the street is a problem and society is going to pay for that, especially in high poverty areas. They seriously impact the economic situation in the community. My concern is why did it become the school's responsibility to deal with a child that even the prison system does not have the facilities to control or manage. We are expected to keep a child in school that frankly would not be incarcerated in some cases, or if the child is incarcerated would not be allowed to receive some of the services that we are providing. Now I realize there are laws that say they must provide it in prison.

I have law enforcement officers that go to the alternative school and look at these students that by the way did not get that way overnight, we are not going to treat them and cure them overnight, but their comment is we ought to slap restrictions on them to where they cannot do this. And my answer to them is you can lock them up but you cannot control them; how do you expect us to do it with the resources that we have.

I have teachers that come to me that are honest, committed teachers that want to work with these children, they go to every length to keep them off the street. But with tears in their eyes, I am now afraid and I do not know how to control this situation.

And one other comment you say about we can take them out of the classroom, we can put them in another setting. Yet, following the due process, we are told that if a parent objects, in the regulation and guidelines, that we can go to an expedited hearing in some cases if they are dangerous to the child or others, or we can follow due process here.

That is drawn like a sword in many circles. Let me tell you, that is impractical. A small system with a small budget with a small number of students with one litigation-minded parent can inundate that system because everybody there wears many hats. It takes key staff people and attorneys considerable effort over a considerable period of time to deal with those cases. It can seriously impact the local organization's budget in litigation and other resources that have to come to bear.

This is not a simple solution for these students. We need the process streamlined and some other way, services provided through collaborative efforts. I do not mind working with any organization in providing these services for these students. But we need funding and we need the community resources and assistance from others to get the job done.

Mr. Scott. Mr. Chairman, could I ask just one more question just on that point?

Mr. Norwood. Sure.

Mr. Scott. As I understand what you just said, society has an obligation to continue providing services for the child, it just ought to either be provided somewhere else or more resources ought to be provided to the schools so that they can do that job, but that job needs to be done.

Mr. Samples. I think there are very few people in our society we should totally give up on. But there are some that we do not have the expertise or the means right now to know what to do with or how to manage, especially in a school environment where other people are in danger and limited resources. It needs to be addressed as a much broader effort than just for education.

Mr. Scott. And Mr. Chairman, I think the record ought to be clear that when I suggested that the likelihood of a disabled student who has been expelled ending up in prison increases when they are expelled, those studies were not contradicted.

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Mr. Norwood. The gentleman's time has expired. I would challenge you to believe that a non-disabled student that is expelled for a year equally has a difficulty and ends up in prison as well. It is not just a disabled student that might end up in prison if they are not trained, it is any of them that bring a weapon to school.

Mr. Scott. Mr. Chairman, I agree with you 100 percent that it is an absurd policy to kick people out in the street when they bring a firearm to school. You ought to continue their education; you ought to continue services, so you have my support equalizing the treatment by providing everyone with an education.

Mr. Norwood. Out of the school system.

Mr. Scott. Wherever.

Mr. Norwood. I would like to also comment about the funding. The civil rights law did not call for extra federal funding. IDEA, according to the law passed in Washington, D.C. said that we would fund 40 percent of this. For the last three years, I have tried to cut others budgets and put it into IDEA, including OSHA, I might add, Bobby.

In order to get the funding from the 10 percent that we send you rather than the 40 percent. Now if we would fund this at the level the law says, I think a lot of these problems would tend to go away. But for some reason, we cannot seem to get off that 10 or 12 percent. We mandate down on these people to spend the dollars to educate, yet we do not do our part. And I do not know why they should have to do their part if we do not do our part.

Mr. DeMint.

Mr. DeMint. One thing I think I have learned already from listening to each of you either, directly or indirectly, is that discipline is a part of an appropriate education. And if we intend to guarantee that and at the same time tell you cannot do it, that we put you in a tough spot.

As I think about discipline, again, not only for weapons but for throughout the school, I have heard many stories of teachers saying basically we have to keep an unruly child in the classroom, disabled or otherwise, because of fear of lawsuits. And I wanted to hear from at least some of you whether or not that is real or perceived. Is there a lack of discipline or willingness to discipline children in schools because of fear of lawsuits, litigation or just the threat of lawsuits? Is this something that is real that hinders you in providing the appropriate education that includes discipline?

Any of you who would like to offer a comment.

Ms. Griffin. I would very much like to respond to that. It only takes one lawsuit, special education lawsuit, in a school system the size of Burke County, to tell you do not ever want to do it again, because of expense of tens of thousands of dollars, the time that it takes away from instruction, time it takes away from supervision because it includes principals, it includes school psychologists, teachers, everyone who has been involved with that child. It is a very expensive process and it is a very time-consuming process and we cannot afford it. So we do many, many times make decisions with that the foremost thing in our mind.

Mr. Norwood. Would the gentleman yield?

Ms. Henchy. I would like to respond also, please.

Mr. DeMint. I must yield since it is his district.

Ms. Henchy. I am sorry.

[Laughter.]

Mr. Norwood. How many new teachers could we hire for our school system if we did not have to use that amount of dollars in the court?

Ms. Griffin. We could fill our vacancies in Burke County quite easily.

Ms. Oglesby. We could get more social workers and psychologists also and counselors to work within our school systems.

Ms. Griffin. Preventative measures.

Ms. Henchy. I would like to add something, please, sir.

Mr. DeMint. Yes.

Ms. Henchy. The high school special education student is sophisticated enough to know that they can cause problems in the classroom and get away with it and we use all of our different instructional strategies to address that, to avoid getting to the point of litigation, because they know it and they verbalize it and they dare you. And yes, our teachers are afraid.

Mr. DeMint. Is it fair to say . . . and I do not want to put words in your mouth . . . but by allowing that to continue, we actually promote disrespect and we promote the behavior that could lead to incarceration later on when we allow that disrespect for authority to go on in schools.

Ms. Oglesby. Yes, and I am going to give you a scenario, because they said in the high schools and I am going to give you a situation that happened in the first grade. I cannot give you the name due to confidentiality. The child was in the bathroom and was continually urinating on other students around him. And finally the teacher said she had had enough from complaints from the students, the little ones, and this is first graders. She took the child aside and decided she was going to reprimand the child and give him some punishment.

Now the child got real upset and said I am going to tell my mother because I cannot get in trouble. The teacher said you are going to get in trouble, it is your responsibility. The child's response to this was no, because my brain did not tell me that I was not supposed to do that. And so the child was already being told and somehow had knowledge of well, I can do these things and get away with it.

The teacher, who is fortunate because her husband is an attorney, decided she was going to do the appropriate action and put the child in in-house suspension, which for a first grader, a lot of people think that is, you know, a little harsh if you cannot control a first grader. The mother was brought in and discussed and told the situation, the mother got very upset and stated, well this is a public school and therefore, it is a public restroom, so he certainly has the right to do whatever he chooses to do with his disability.

Now, when you are using that kind of judgment . . . and this is from a first grader . . . what is that saying to us and what the rationale of the parents are with these students.

Another situation with ninth graders and with eight graders where we have a weapon situation is the intimidation factor, as she was stating. And we have had several of the teachers that have been pushed against the wall by a student and basically threatened and the teacher was afraid to really process through with what really needed to be done, because of any kind of other situations happening. The situation with the teacher and the student who was sent to the alternative school with a knife, who is now in jail because of a murder during the summer, the whole time the teacher herself felt the intimidation factor in that room and the whole situation with the school population felt that same thing. This was really a scary situation. The child had a rap sheet a mile long but yet you cannot include that when you are doing some of these things due to confidentiality and the mixing of services.

So therefore, there are situations where it does set up a dangerous precedent for everyone in that situation and also makes it impossible for them to give those services when you have to deal with the one-on-one. Those crimes are being handled in a disruptive manner from the student and they know what they are doing. The parents are learning very quickly and it is very costly.

Mr. DeMint. Ms. Hatcher.

Ms. Hatcher. I would like to respond in that yes, there are some . . . there is the fear factor, but there are a lot of teachers who have benefited from staff development activities where they have learned how to address some of the issues that we are talking about and to implement the IEPs successfully with students with disabilities.

I think it is very important that we talk about staff development and training because that is going to be one of the keys to how our teachers are going to be successful in disciplining students. They need to learn some discipline strategies. We need to talk about alternatives, because discipline occurs on a continuum. There are degrees of discipline.

Most of the . . . I know we are talking about weapons and drugs and those more severe behaviors, but oftentimes there are behaviors that lead up to the most severe point of a child's misbehavior, disruptive behavior. And I think if we can talk about some strategies to prevent some of the things that occur before they occur, I think that we just have to talk about that as well.

The parent training is important because parents are partners with us and we need the parent to work along with the teacher, with the school administrator in implementing the behavior intervention plan, so that we can provide discipline. I do feel that in many cases teachers are disciplining students, but when students commit those severe offenses that result in a removal, then it is time for that student to be removed. But I think we have to work up to that point.

Mr. DeMint. My time has expired.

Mr. Norwood. One more.

Mr. Newton. I will begin by saying that all of us want to do what is right for the children in our schools; and yes, to simply answer the question, we are afraid of lawsuits. Before I came on as special education director, there was a due process hearing in our county about another matter . . . and I do believe students with disabilities need to have due process rights and those rights need to be guarded . . . that one case cost our system $50,000 to $60,000 for a school system, at the time our budget was probably $7 million. It does not seem like a whole lot, but it is a lot of money, it is a teacher in our county.

When I talk about rights and talk about due process for children, I believe children should be entitled to a free, appropriate public education. I think that is what we are all about. We want to ensure that right. However, when a student . . . and we are talking about a very small percentage of our disabled students that fit the category of being severely disruptive and causing problems, they need something beyond what we can give them. We would love to have a place for those children to go. Sometimes we do not have a place for those children to go.

We are very fortunate in our county that we work very closely with our psycho-educational program, that's a unique program in the state of Georgia, it is a program that can serve students outside of the school system that have severe emotional behavior disorders, but what happens when . . . and we have had cases where this has happened . . . students in that psycho-education center pose a severe risk to the safety of the teachers and other students in that building. For example, I sat in an IEP meeting with a teacher and a student and a family where the student last year had threatened that teacher who was eight months pregnant, threatened to kill her, threatened to kill her unborn child and threw a table at her. We subsequently pressed charges through the juvenile court and it was almost like twisting the arm of the juvenile court. We enlisted our district attorney to help prosecute this case, the student was adjudicated but that teacher was very, very fearful and is still fearful of that student. Under the advisement of our attorney, school board attorney, Sam Harmon, we talked about other possible ways we could serve that student to meet the IEP. One of those aspects that I believe Representative Scott brought up was home schooling. The language in the law and the regulations make it very unlikely . . . or make it very likely that if a parent were to sue us over a home school placement, we probably will not win because that does not really represent the general curriculum as stated in the law. A home school is not a general curriculum. Alternative school we could argue may be, a psycho-education center may be part of a general curriculum, but home school is really not an option. Can we try it? Can an IEP committee recommend it? Sure they can, but I am really concerned that from a legal standpoint . . . we have to think about that. We have to think about one due process issue brought up against the school system, as I think one of the persons stated before, could cripple a school system like ours in Jasper County.

Thank you.

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Mr. Norwood. The gentleman's time has expired. Gentlemen, do you agree to a second round?

Mr. Scott. Good, thank you.

Mr. Norwood. Let me ask and clear for the record . . . I hope the Committee realizes the outstanding panel that we have with hundreds of years collectively of experience and I value your input greatly. I would like to ask a few simple questions.

If the federal government would fund special education according to federal law, do all of you agree that we should make every effort to teach and train our special education students?

Mr. Newton. I would agree 100 percent.

Ms. Henchy. Yes.

Mr. Norwood. I know all of us up here agree that that is one of the things that is a good thing to do and that we should continue. Now do all of you agree or not agree with my amendment to special education to expect zero tolerance for any child who enters the classroom in terms of weapons. They should all be treated the same and that is the number one priority we have in the classroom, is first keep that student and that teacher safe. Do all of you agree with that?

Ms. Henchy. Yes.

Mr. Norwood. Ms. Hatcher.

Ms. Hatcher. The disagreement that I have pertains to the student who is severely disabled cognitively. Someone mentioned Downs Syndrome earlier in this discussion. There are some students . . . and I know this would be a very extremely rare occurrence, but it could happen . . . a student could find a weapon such as a gun somewhere and bring it to school with him or her and not have the cognitive ability to really understand what he or she has done.

Mr. Norwood. Yes.

Ms. Hatcher. I think in that case, we need to treat a child of that stature on a case-by-case basis. Now with Downs Syndrome students, the students who are profoundly or severely disabled, in our county they have an individualized behavior management plan any way, and I would want to see some type of flexibility applied in a situation of that nature. But for mildly disabled students, I would say yes.

Mr. Norwood. Ms. Hatcher, let me sort of rephrase a little bit, because you and I agree.

What we are saying is that there is zero tolerance in any classroom for bringing any weapon by anybody. Now how that is dealt with then is determined by you. And that is whom I am trying to get the authority to. If this happens to be a Down Syndrome patient and if they brought a gun that is a manifestation of that syndrome, you would make the determination as to how you would handle that child. So you would have total flexibility with this amendment. Mr. Norwood's amendment states ``Such personnel," meaning you, ``may modify the disciplinary action on a case-by-case basis." In other words, we are trying to put that into your hands.

Now my third question to follow up, because I want to get this on the record, and particularly, Ms. Hatcher, you were talking about prevention.

Ms. Hatcher. Yes.

Mr. Norwood. A number of you have said, you know, the way we need to deal with this, do not wait until they bring a gun to school, what can we do ahead of that to try to prevent it. Are you saying that it may be fine to have zero tolerance for weapons, but we need to look at how we discipline the special education student overall so that we might be able to discipline them without fear of a lawsuit in terms of preventing them from later getting to the point where they may or may not bring a weapon to school. Is that what I am hearing?

Mr. Samples. Think about it this way, Congressman Norwood, if you would, please. A student that is sort of violent and the behavior goes on, but yet does not bring a weapon, has very few consequences. What causes that student to really believe that we mean it is once he brings a weapon to school. So that child needs to understand that there are consequences long before that weapon is ever brought to school.

Mr. Norwood. Anybody else?

Ms. Griffin. We do need to look at it comprehensively, but we cannot wait on the weapons issue. We need that now. Your amendment would provide that authority to school systems, as you said give us the flexibility to treat individuals on a case-by-case basis.

Mr. Norwood. See my feeling is your profession is one in which you want to educate children.

Ms. Griffin. Right, we do. As Representative Scott said, IDEA is good legislation for instruction, but does not hinder us by not allowing us to treat and teach children to be responsible for their behavior. If school systems 30 years ago had done the right thing and not said things like well, you cannot come to school because you are in a wheelchair and you might hurt yourself; if we as school systems back then had done what we should have done, then Congress would not have felt the need to get involved.

Mr. Norwood. That is true.

Ms. Griffin. And when you get involved, then the body of law that you hand to us just begins to grow beyond belief. So now we have all of that to deal with when originally what you wanted us to do was to educate disabled children and nobody would disagree with that ever.

Mr. Norwood. I am sad to say my time has expired. Mr. Scott, it is your turn.

Mr. Scott. Thank you, Mr. Chairman.

Mr. Chairman, you asked a question whether or not all of the panelists agreed with a certain position. I feel compelled to point out that a public hearing at a Congressional level is not the same as a public hearing in legislative or city council matters where the public is invited to speak, it is more of a hearing in public where witnesses are invited and unlike many other situations, only one side was actually invited to testify today. So the fact that they all agree is a reflection of the invitation list and I think not as a reflection of total sentiment.

Mr. Norwood. Would the gentleman yield just a second?

Mr. Scott. I will.

Mr. Norwood. Well, I am simply pointing out that the people at that table over there are probably better able to vote on this than most members of Congress since they deal with it every day. And it is interesting that people in the trenches tend to believe this is the right way to go, at least at this hearing today.

Mr. Scott. Well, I guess both of our statements are on the record.

I also want to acknowledge as a lawyer the fact that we have this legislation and parents know that their children have a right to get educated. Wherever you draw the line, there is going to be litigation. So the fact that there is litigation wherever the line is not going to change by moving the line over a little bit, you are still going to have litigation.

Mr. Newton, you went to great length to describe a dangerous student who I believe brought a weapon to school and was in fact dangerous to other students. The point we are trying to get to is whether or not you ought to have the option of expelling that student and ceasing services to that student. My question to you is if you are allowed to stop the educational services to that student for a year, what will happen to that student and what will happen to society. What is the goal to be achieved by expelling that student?

Mr. Newton. I would not say there is a goal specifically, educational goal, to be achieved. But like the rest of the panel has reiterated, I was a classroom teacher, I taught children who had severe emotional, behavior disorders, I taught children that had behavior disorders, I have taught children in alternative school education setting. I have not been a regular educator. So I am committed to helping children who have problems.

However, I do not feel like we should allow one student or a small group of students to continue to disrupt, threaten, and destroy the learning environment for those other children.

Mr. Scott. We have already said that you can remove the student from the classroom. My question is what goal is achieved by ending educational services to that student.

Mr. Newton. There is education in the classroom for the other kids who are in there to learn.

Mr. Scott. If you remove the student and continue the education somewhere else, what goal is achieved by . . . instead of providing the education somewhere else, what goal is achieved by ceasing educational services altogether?

Mr. Norwood. I do not mean any disrespect, but where is the other place? Alternative educational settings are available but when you have exhausted those options for that student, there are no other instructional alternatives other than home school programs, which at the advisement of our school board attorney, is not a feasible option under the law.

Mr. Scott. Well, again, if you expel the dangerous student and they are without any supervision, without any education, more likely to commit a crime in the future, how does that help society rather than continuing the educational services somewhere else other than that classroom?

Mr. Newton. We have also forgotten one important factor here, parental responsibility. And I really feel like it is also the responsibility of the parent. If you have got a situation where a parent has not done good parenting and a child is not able to control behavior, the parent bears the responsibility. I do not believe it is the responsibility of the public school system to shoulder 100 percent of the disruptiveness of that student.

Mr. Scott. Well, unfortunately, we do what we can with the parents and my question I guess is the experience in Iowa that showed that 220 discipline problems where people had to be removed from the classroom was reduced to zero when you empower teachers with skills, provided psychological services and it seems to me that that might be a better approach than waiting for disabled students to mess up and then deciding when you can cease educational services. It seems to me that when you are on the hook for educational services one way or another, school systems are much more likely to provide a comprehensive approach to the student than having this catchall at the end, be kind enough to mess up so we can get them out of the system, out in the street where they can kill people but not in the school, the school system will be better off.

Mr. Newton. One thing that I think, you know, every panel member here outlined is that we all are working hard with the prevention efforts to work with students early. I can speak for my county in terms of trying to work for early identification of students that have problem behaviors, implementing behavior intervention plans, having counselors in the school to work, having teachers trained to know how to handle those students, but again, I would love to believe we could save 100 percent of the children in our school system, but that is not a realistic goal. That small percent that have the problems . . .

Mr. Scott. It is a small percent now because we do not allow you to kick the students out. If you had that option and could kick out anybody who fit this little description . . . and most of the disabled students who get kicked out do not return, and that will do wonders to your budget because we know they are much more expensive to educate, how does that help society?

Mr. Newton. In my particular school system, when we looked at expulsions, and I ran an alternative school program for about three and a half years, we took to the board probably four students of expulsion. Our board did not always uphold what our recommendations were. There are due process safety procedures in place for all students.

Mr. Scott. That is under present law.

Mr. Newton. And yet we do not want double standards.

Mr. Scott. That is under present law.

Mr. Newton. Correct. We do not want double standards for children who have disabilities versus those children that do not have disabilities. But you know, I think we all are here again for the education of children, that is the bottom line.

You know, my child will be starting in a public school next year. I want to make sure that the classroom he is receiving his education in is disruption free so that he can learn, so that he can be a productive . . .

Mr. Scott. Is your child safer having kids wandering around the malls that are carrying guns without any supervision and without any educational services on a trajectory much more likely to commit crimes in the future . . . is your child safer if that policy is pursued?

Mr. Newton. Let me ask you this question. What can schools do to circumvent all of these problems? Like we are a part of the problem in terms . . . and part of the solution in trying to help children. But we cannot fix all of the ills of society in general, the issues involved in the lack of parenting, the issues involved in the breakdown of the morals of our society. You know, I think there are some really big factors out there that are interfering with our ability as school systems to educate children.

But, you know, I agree there are people in society that have problems; yes, there are people out there walking around that have intent to hurt other people. But society is always going to have that kind of people and quite frankly . . .

Mr. Scott. The question is whether or not your child will be safer with people like that wandering around with no education, no future, and all the studies showing that they are on a trajectory which is much more likely to be crime-ridden than those for whom we continue to try to provide a free and appropriate education?

Mr. Newton. We do not have the answers to that and I think that has been stated over and over. I wish we did have the answers, I would not charge you a dollar for it, I wish we had the answers to the problem. However, this school, a school, should be a place where a student can come and feel safe and learn something and learn how to become a productive member of society. They cannot do that if they are sitting in a classroom where children . . .

Mr. Scott. Well, we have already agreed that you can remove the disruptive student from the classroom. The question is whether or not we should continue providing an education.

Mr. Newton. There are circumstances where, as was spoken before, dependent upon the child's disability . . . I certainly believe in the manifestation rule, I think you need to have manifestation hearings where you look at certain behaviors related to certain disabilities. I do not think we should have just a blanket standard for every child, but as Congressman Norwood reiterated, it should be the school's decision in terms of . . . in that due process procedure . . . as to whether or not services go beyond . . . or services are provided at all for that particular student. And I am not even saying from a cost standpoint.

Mr. Scott. Well, we already addressed that in the first question I asked. If it was up to the school, a lot of the students would not get any educational service at all.

Ms. Griffin. I disagree.

Mr. Scott. And that is why we passed Individuals with Disabilities Education Act to begin with, because students were not getting educated.

Ms. Griffin. But we have said all along that now we are talking about a very few number of students. And quite frankly, if I have to choose between Burke County High School or Burke County Middle School being a media event as opposed to some other location, I am going to choose the other location.

We do not want students to be on the street toting guns and being at risk to other people. That is not our cause at all. But you keep telling us to educate these children, but you do not tell us how and you do not tell us where and you do not tell us who is going to pay for it. I do not think anybody here today has disagreed with anything that you said, but you just give us a challenge that is totally just out of proportion to the resources that we have.

Mr. Scott. Well, then I think the debate ought to be coming up with the resources to provide, because frankly . . . we can say it is the parents' fault, we knew that to begin with, we can say it is society's fault in general, but unfortunately as legislators, the only thing that we can do, the only access we have to these kids is in school and if they are not provided with an education, they are going to be more of a problem than they would if we continue to try to educate them.

Ms. Griffin. I agree and if you have the . . .

Mr. Scott. I have some other questions, but I think I am about to get choked by the Chairman.

Mr. Norwood. With your permission, I think a couple of you wanted to respond. Why don't you do that and then we will go to Mr. DeMint, if that is all right.

Ms. Hatcher. Thank you. Mr. Scott, your comments are very well taken. In fact, we have a system-wide discipline committee in Richmond County and we have spent countless hours talking about the issues, the pros and cons of students being removed. We have recognized that when students are removed from school long-term, that they do wind up in the malls and on the streets and we have asked ourselves the question what is the benefit of that.

Well, we do look at the fact that students who remain in the schools are receiving an education in an environment that is not disruptive, so that is wonderful for those students. At the same time, what about the ones who are out on the street.

The professionals and parents who have been involved in these discussions have come up with real nice possibilities. We have said things such as if we had the funding, we could develop a whole new concept of education for students whose behaviors are so deviant that they cannot remain with the general population of students. We have talked about what would be in those type schools . . . security, counseling, psychologists, and full time counselors. You know, we have drawn beautiful pictures of what we feel the answers might be. But the bottom line is that it goes back to funding.

In Richmond County last year and year before last, when students were removed from school beyond 10 days, on the 11th day, we provided services for those students. We went to homes, we went to the public library, we went to community centers, we sent special education teachers and this year we sent some special education and regular education teachers. This was at a great hardship to us financially, but we did it in the interest of trying to carry out the letter of the law.

What I see as one of the major solutions is that we . . . once the funding is in place, once we receive the funds, then we will have greater possibilities for addressing another type of education perhaps for those students whose behaviors prevent them from being educated with the mainstream populations.

Mr. Norwood. Mr. Samples, you wanted to comment?

Mr. Samples. A couple of comments, please.

I guess in the way of questions, and I do not mean any disrespect, but I have a real concern with what I am hearing. I have trouble understanding when it became the educator's role to protect society. It became the educator's role to educate our children.

Now we have these children that you are very concerned about on the street . . . so are we, because we live in those communities where they are wreaking havoc. The problem is I am already hiring police officers, putting them in the school. I am already collaborating with police to have high visibility and on my campus every day. I am already having to work with others in restraining certain students that are a danger. I do not have the resources or the expertise.

If we are going to do that, then do the schools take over other agencies and put them under their control to where we can manage the safety of society? I do not see that really being our role.

The energy and resources that we are diverting now to dealing with this small percentage of students that we are talking about, if that same energy and those same resources were devoted to the education of children, maybe we could educate one to the point he could help solve this problem in the future. But right now, we are having to divert those funds and resources to deal with this issue in the schools that, to me, the schools were never intended or prepared to handle. If you want us to do it, then we have to know that clearly and we have to have the resources and be able to draw from other parts of our society to be able to accomplish that task.

Mr. Norwood. Thank you, Mr. Samples. Mr. DeMint.

Mr. DeMint. Thank you, Mr. Chairman. And let's move back to focus on the Chairman's amendment for a moment, just to see if we have developed an agreement at both tables, which it seems that we have at least on some points.

I think I am hearing that we all agree that the same discipline should be applied in the case of weapons being brought to school regardless of the classification of the student. I think I am . . .

Mr. Scott. Will the gentleman yield?

Mr. DeMint. Sure.

Mr. Scott. I think my agreement with that would be if the policy made sense and that all students should be educated, that the educational services ought to be continued for everybody.

Mr. DeMint. I am getting to that point there.

Mr. Scott. And equality for equality's sake. Let me just say, the policy in my view to expel students without any education services is a bad policy, but it is particularly egregious for disabled students, people who you have identified as going to have trouble in school. Once they are expelled for a year, the chances of them ever catching up are very slight. So the policy is much more egregious when applied to special education students than others are.

Mr. DeMint. Allow me to reclaim my time just because I was getting to that. I think we probably could agree that the same discipline should be applied, we could even agree that these students, regardless of classifications, could be removed from the normal school environment. The question is should schools continue to be obligated to provide education services to that small percent of violent or potentially violent students who have demonstrated that in the form of bringing a weapon to school.

I think we maybe have heard enough discussion on that, but that seems to be where the main disagreement is, is it the school's obligation off-site to develop education services for these violent or potentially violent students, or is it something that the school can wash their hands of, effectively, and focus on educating the students that they can handle?

I think the cause for concern in Washington, and I think from Mr. Scott, is there is probably more incentive for the school system to remove a disabled child than there is another child because of the cost. And that is the concern I constantly hear in Washington, while I do not agree with it, is that if we give you the flexibility to wash your hands of these students, that you might do it more readily for those students that are the most expensive and the most difficult to deal with rather than focus your resources on trying to figure out how to help them in the school setting or an alternative setting that you manage.

So that is kind of the crux of the issue in my mind and I think just for the balance of my time, I would just take any comments or wisdom that the panel might have, particularly those that have not had as much of a chance to speak.

Ms. Henchy. Gentlemen, I would just like you to consider the importance of the school mission and the importance of educating all the students and the time and effort that we put in for a small group of students who have been given every opportunity to be educated is very, very difficult to understand. We want all of our students to be educated and we want all of us to be safe, and I do not really like for us to consider this double standard.

Mr. DeMint. Thank you.

Ms. Oglesby. I just have two questions, I believe probably directed at Mr. Scott. He was saying that the responsibility of educating children further. Are you saying then that if we educate all the children, even though they are disabled . . . all the children period, straight across the board continually, then we will never have crime again?

Mr. Scott. No, but . . .

Ms. Oglesby. Well, that is the inference that stayed with me. If we do not educate them, then they are going to continue to be a hindrance to society, so forth and so on. And you know, there is no guarantee when we educate them continually from now until doomsday, it will not matter.

The other thing . . .

Mr. Scott. You asked me a question.

Ms. Oglesby. I have two questions. When you were giving statistics, you were giving Iowa. What are the real statistics so we can look comparatively all the way down the road that deals with that issue on a whole basis, not just on some? And are we going to have police cops to go around and make sure that all the kids that are running around loose, which are at a very early age . . . you can walk the streets now, the parents do not bring the kids to school. Are we going to hire police to make sure that all these children attend school whether they want to or not?

Mr. Scott. Well, on the first question, you can never eliminate crime but all of the studies show that if you continue educating children, the rate of crime will go down; that if you cease services to students, they are much more likely to commit crimes in the future. So to convert you cannot eliminate crime to it does not make any difference, it makes a significant difference when you continue to educate the children.

Ms. Oglesby. When you are saying continue to educate the children, whose responsibility? The police or the other agencies or the schools? And that is where I think a defining line needs to be drawn. Whose responsibility, the continuing of education.

Mr. Scott. I agree with you. We have not given school systems the adequate resources. As Ms. Hatcher outlined, with more resources, you could do a whole lot more. And the debate ought to be why we are not providing the appropriate resources rather than whether or not we ought to be doing all we can to reduce crime and violence in the community.

Mr. Norwood. Next time I have an amendment to cut OSHA for $15 billion, I am going to put it into IDEA, I am going to watch how these two vote, I will tell you that.

Mr. Scott. You can count on me.

[Laughter.]

Mr. Norwood. We are going to go around one more time, gentlemen, and I am going to be very strict on the five-minute rule on you and myself. We will be brief. If that is all right with the panel.

Let me try to understand a thing or two. During my other life, I treated a lot of disabled patients and one of the things I observed about that are the parents, how hard they work, how caring and loving they are and how difficult it is to try to make that life work, for example, with a Downs Syndrome patient.

Mr. Scott implies that anybody that is disabled that did not return to the educational system for whatever reason, you immediately assume they are going to be out on the street. I do not immediately assume that, I do not necessarily believe that disabled children, for example, would be on the street more or as much as children that are not disabled that might be suspended. Am I wrong about that? Am I confused about that?

Mr. Scott. They are going to be on the street. The question is when they come back at the end of the year, the disabled student will have a much more difficult time to catch up. All of them suspended are much less likely to ever graduate and much more likely to be a problem to society in the future than if you had suspended them from the ordinary classroom and continued the education somewhere else so that at the end of the year, they are much more likely to be able to continue on a trajectory towards constructive life rather than a destructive life.

Mr. Norwood. Could I get the panel to answer that? In your observations and at your experience, do you think that these children would immediately be on the street? Is that a fair assessment?

Ms. Hatcher. I mentioned in my earlier comments that students have disabilities on a continuum. It has been my experience that students who are mildly disabled are the ones most likely to fall into that category. Students with the severe, moderate disabilities are the ones who, in my experience, have not been the students who have, first of all, committed the offenses that brought about the removal in the first place. But the students who I have seen out in the community have been students with mild disabilities.

Mr. Norwood. So if you had the flexibility to deal with those that are mildly disabled that might have a tendency to bring a weapon to school, in effect you are being very protective of disabled students that have a greater disability. So part of who we are trying to protect here is not just the class, part of the class that is not listed under disability, but much of the class that are disabled students.

Let me ask very quickly, is there an increase in the number of children that fall under the category of disabled students?

Ms. Griffin. Yes.

Ms. Oglesby. Yes.

Ms. Hatcher. Yes.

Mr. Norwood. What is causing that?

Ms. Hatcher. In Richmond County, we have identified some reasons. For one thing, we live in a transient area where we have a lot of military families who are assigned to Fort Gordon. We have a heightened sense of awareness among some of our parents, a lot of our parents, in terms of IDEA regulations. Because of technology, a lot more information is available to people than we used to have in the past, and so people are becoming a lot more aware of services available to students with disabilities.

We also have identified that just from our child find efforts where we have actively tried to identify students who we felt might be disabled, who might meet the categorical definitions of the various disability areas.

And so a lot of activities really have taken place over the last probably 10 or 15 years and most recently the last few years, to identify students. And so all those efforts have resulted in just tremendous increases in our populations of students with disabilities.

Mr. Norwood. Anybody else?

Ms. Griffin. In Burke County, which is of course a much smaller school system, our caseloads are increasing dramatically and in fact last year, our caseloads for emotionally behaviorally disordered students doubled.

Mr. Norwood. Is there any problem with the definition?

Ms. Griffin. Emotional behaviorally disordered?

Mr. Norwood. Yes. In other words, you have to have some parameters before a child fits into the category of being disabled.

Ms. Griffin. Exactly.

Mr. Norwood. Has the definition stayed stable?

Ms. Griffin. I think the definition as it currently stands is a good one.

Mr. Norwood. Okay.

Ms. Hatcher. May I make one more comment?

Mr. Norwood. My time is up and I am going to . . .

Mr. Scott. Take your time.

Mr. Norwood. I am going to give you your opportunity.

Mr. Scott. You want to be able to cut me off.

[Laughter.]

Mr. Norwood. That is right, that is exactly right.

Mr. Scott. Since we are going to be strictly confined to the five-minute rule, let me get to some other questions. Alternative schools . . . are some students disruptive in the normal classroom that do well in alternative settings?

Ms. Hatcher. Yes, sir.

Mr. Newton. I would certainly agree to that. We have had disabled students, when I was the program director, that did exceptionally well. Our alternative school program, we are a small county, we are a rural county, and our alternative school program is a very small program. So our student/teacher ratio in that particular program was even smaller for the students than they had in a regular say BD classroom. So yes, there were some successes there.

Mr. Scott. And does that include non-disabled students?

Mr. Newton. That does include non-disabled students as well.

Mr. Scott. Ms. Hatcher.

Ms. Hatcher. Our alternative school service in Richmond County provides . . . we have two special education teachers in the alternative center and when students are referred to the alternative center, they continue to receive their special education services as well as their general education services. And yes indeed, there are students who do quite well at the alternative center, although they did not do well in their home schools.

Mr. Scott. And does that apply for non-disabled students as well?

Ms. Hatcher. Yes.

Mr. Scott. That some non-disabled students as well as disabled students can be very disruptive in the normal classroom but in an alternative setting will do well?

Ms. Hatcher. Yes.

Mr. Scott. Can somebody say a brief word about dress codes and whether or not they are helpful and how they are implemented?

Ms. Henchy. Yes, sir, we have a very strict dress code at Burke County High School and it is very, very helpful to improve the academic environment.

Mr. Scott. What difference does the dress code make?

Ms. Henchy. Well, you are concentrating more on academics and less on the attire.

Mr. Scott. And you have noticed a . . . do you have any civil liberties problems in implementing it?

Ms. Henchy. No, sir, we have not.

Mr. Scott. And is it a mandatory requirement or an optional requirement?

Ms. Henchy. We do not wear uniforms, but it is mandatory that they follow the dress code.

Mr. Scott. And one final question, what do the various school systems do with Safe and Drug-Free School money? And does it make a difference?

Mr. Newton. Well, one thing, we are severely limited by . . . I work closely with our Safe and Drug-Free School Coordinator . . . is really the amount of money she is allowed to actually spend on school safety. We receive $8000 in Jasper County which is just pennies in the bucket and yet she is only allowed . . . and I do not want to quote the percentage, but it is a small percentage and I believe she said it was $2000 of that $8000 that she could devote toward school safety, out of Safe and Drug-Free School money. That is very concerning.

We do not like to tie up a lot of that money in equipment. I think equipment does serve some role; however, we do want to work on prevention, working with teachers, getting workshops together for parents. $8000 does not go a long way. So certainly I think the money is great, I think it is well intended. If we had more directed toward safety, I think it would certainly help.

Mr. Scott. What would you do with more money for safety?

Mr. Newton. I think in terms of safety, increased education efforts with parents, with teachers, you know, increased awareness in general with students. You know, we do have consultants that come in, we do have some of our teachers that do staff development with . . . you know, these are the things you need to look for in the classroom in terms of, you know, danger signs, those types of things. I think funds could also be used for equipment. Do not get me wrong, I think that we do have surveillance cameras, the surveillance cameras break down. When they break down, you have got to pay to have them fixed and if you do not have the funds to do that, that is a real problem.

The alternative school program Dr. Cope and I visited down in Bibb County has an excellent security mechanism in place and, you know, it takes money to maintain that kind of program and federal funds would be helpful in that area.

Mr. Scott. I think Ms. Hatcher said she had all the answers if we just had enough money.

[Laughter.]

Ms. Hatcher. Mr. Scott, at the risk of really going out on a limb, I feel that I am ready for the challenge and I feel that our school system would embrace the challenge of trying to find the answer provided we had the funds. But I see funding as the solution . . . not the solution, but that . . .

Mr. Scott. Well, what kind of things would you do with the money?

Ms. Hatcher. I have mentioned a couple. We would do things such as looking at alternative settings that we do not currently have. We would actually be creative and design an education program that may include different levels of our current alternative setting. We have talked about bringing in psychologists, maybe having full time social workers, full time school counselors, incorporating people from the social service agencies. We have talked about having our students go through programs such as the ROPES program, and I have not gone through it, I have some information about it, but I understand it teaches them lots of character building things that they would need to have as successful human beings. We have talked about things such as having students learn skills, life roles, and job skills at the alternative center. We have just brainstormed all kinds of things and we would love an opportunity to put some of those brainstormed ideas into actuality.

Mr. Norwood. Mr. DeMint.

Mr. DeMint. I was happy to read a recent study from the Centers for Disease Control that had tracked youth violence from 1991 to 1997, that pointed out that youth violence had actually decreased, the number of youths carrying weapons had actually decreased. And I think it is important as we study this to recognize that all of our youth are not going to be crazy, that we have got a lot of great kids.

Yet, we have had a few who have been willing to use deadly force in a way that I never would have imagined when I was in school. People got real mad at each other and had fights after school, but I would just be interested in your opinion. Do you see anything in what is happening in schools that would somehow inflame a youth to use deadly force when . . . what has changed? I know it is just a guess. I am interested if it has anything to do with your ability to actually control the school environment, the ability to discipline without fear of litigation, but I do not want to put words in your mouth. I mean, you may think it is more access to hand guns, but obviously it is something we are discussing in Washington and I would just be interested in any of your opinions, if you have a guess on what has changed that would cause that deadly force in the schools.

Mr. Newton. Well I think schools can address the issue, I am really pleased that in the state of Georgia we are looking at bullying as an issue. It is almost like a three strikes and you are out of the alternative school if you are caught bullying. I think policies need to be developed that are clear and succinct in terms of what is bullying. So I think we are addressing some of those issues and I have heard in a lot of cases across the United States where there have been school shootings, the shooters have alleged that they were bullied, teased. I think that is part of the problem.

I think certainly what we need, and desperately what we need, in the school system are more counselors. We have children that have severe mental health needs that are sometimes labeled disabled and sometimes they are not really disabled in the classroom, but they have all these other social problems that we certainly could help address if we had counselors. Currently we receive no funding for counselors in grades K through 3 in the state of Georgia.

And I am telling you, we have focused our efforts at early intervention and early identification of students that have behavior problems. We have gone to great lengths, we have received catch/match positions with our Department of Family and Children Services. We have sponsored local monies to have school psychologists go in there. But I think we still need to do more. We have elicited the help of mental health to come in, but their resources are so limited.

Schools can make a difference but again, there are funding issues involved there. I think in general . . .

Mr. DeMint. I appreciate the comments, but I am going to run out of time and I just want to get a few brief additional ideas from anyone else at the table that would like to.

Ms. Oglesby. Having worked with sexually and physically abused and neglected children, there is a lot of violence and abuse that these children are subjected to and a lot of these children that have come back into the school system or are in the school system are very angry and upset. There are some things that really impair their ability to think rationally at times. And a very quick solution to them is just to take it into their own hand. We are talking about one in seven is usually physically or sexually abused before they are the age of seven. And we are also talking about the situation of drugs and violence within the home with the parent. And this is not just those that are economically disadvantaged, it is across the board. We are not just seeing it in black communities or white communities, this is across the board.

We are finding that when we have those children come into the school, they have had to take care of their alcoholic parent or their drug induced parent and having to take care and responsibility for looking after their siblings and then having to come to school and deal with the situations that are going on there that also makes for a negative situation for them because they listen to the other kids and some of the other kids know what is going on and they start inciting them. And so therefore, it impairs some of their abilities to think out things rationally.

So the counseling situation, the social work situation on those things definitely can help some of this violence, although I will say that in a school system of 35,000 we only had 98 weapon violations and that is really pretty good. I mean most people will say a weapon is a weapon and that can be dangerous; yes, it is but 98 out of 35,000, that looks pretty good.

Ms. Griffin. I would say that most of the behavior issues that we deal with are not school-based, they tend to be more home-based issues that students bring to school. So that is a tremendous challenge for us.

The Burke County school system does provide locally funded counselors at the elementary school level and also locally funded school psychologists because we do believe this is such an important issue.

And to agree with you that dealing with these issues in kindergarten, first, second and third grade is vital.

Ms. Hatcher. I would add that it is vital also to incorporate the parent component as we think about what we can do in terms of a preventive mode. We happen to have some special education consultants who work very closely with our parents and they do a lot of the things at the home level to relieve stress within that environment, which has a positive impact on the students within the school environment.

Mr. DeMint. Mr. Samples.

Mr. Samples. I would like to echo most or all of what has been said here. In my working in the classroom, my experience with students and with those that are doing so now, staying very close with what they are dealing with and providing services for them, many of these students are bringing the anger and the problems with them when they come into school. Probably the only smile many of them get is at school. Food of any quality is received at school. The persons that they can build some kind of confidence relationship with generally are at school. And when they come in and for some reason we are not able to recognize that they are hurting, they are disappointed at that and if we do not have qualified, trained people to deal with it when they come in like that, for some reason, some students feel a lot less restraint at striking out at someone at school. They feel there is less danger, less risk in doing that than striking out at somebody on the street or in the home or some other abusive situation. So that anger I think is a cry for help.

Mr. DeMint. But do they feel more comfortable doing it in school because the punishment is less than if they do it on the street?

Mr. Samples. I think in some cases that is absolutely the case. I think in others, it is just total frustration that somebody should be listening and you folks, of all people, should be listening. And we need the resources to have people that can identify that and deal with it. If we can defuse in our alternative school settings, for example, students that come in with a great deal of anger, serious situations, if we can defuse that situation immediately when they come in and have someone that is qualified to sit with that student until they cool down and we can deal with their anger and their emotions, many times a day goes well. But you get one student coming in like that, that is not recognized and not dealt with, will destroy your program for the entire day.

Mr. DeMint. Thank you. Thank you, Mr. Chairman.

Mr. Norwood. Yes, sir. I thank the witnesses. Your testimony is very insightful, very valuable and we are extremely grateful for you spending this time with us and I thank my friends, our members, for coming over from Virginia and South Carolina to help us and this Committee try to determine where we want to be.

Just to wrap it up, I would say that in the last 10 years, there has been growing pressure on this problem. And I am certain that is true of the last seven years as I have been involved in this environment because I hear from people in the Tenth District on this subject as frequently as anything else I really hear about from them.

Now in 1995, we made an effort, feeble as it was, we made an effort to change IDEA and the discipline requirements, and basically what we said is that a child may be moved to appropriate interim alternative educational setting for not more than 45 days in terms of discipline, if that child carries a weapon to school or brings or uses illegal drugs.

Now what I have heard since 1995 in no uncertain terms . . . and I stay in pretty good contact, especially with my superintendents . . . that is not it, that is not the solution. That confuses the issue, it does not help us with the problem.

Where we have moved to this year is to simply say whatever else you do in schools, you have got to keep them safe, you have got to do that for the disabled student, you have to do that for the non-disabled student and you have to do that for the teacher and we are going to take one more step in that direction simply saying loud and clear across the land that we will not tolerate weapons from anybody inside our school system.

Now I think that I can with some confidence tell you that if we can pass the juvenile justice bill, that is going to become the law of the land. We had a very bipartisan support in the House, over 300 and something votes, and the same thing in the Senate. And that is all fairly good indications that we are going to move in that direction.

What I intend to do is to continue talking to you because I am very interested in this preventive aspect of it and where else we may need to take this discipline requirement. I am absolutely totally 100 percent convinced that the people who need to make these decisions work right here in this school because you know the children really well. We cannot make them in other places and the federal government should not force you to make decisions about our children, especially those that you know best.

I am going to continue to believe that all of you are in education for one simple reason. You love these kids and want to make sure that they are educated and trained and you are going to do your dead level best to make the right decisions. And that has a lot to do with this, trying to get it back to you, because I am convinced that you can do the job better than anybody else.

Now I am not a teacher, but my great grandfather was and my grandfather was and my uncle was a superintendent of schools and my mother was a teacher and my wife was a teacher and my mother in law is a teacher and I think I have got a little of it in my blood. I have had 20 years of education and I am very interested in this subject. But we have to make sure because the 21st century depends on you more than anybody else. If we are going to continue to be the greatest country in the world, it has to be done right here in this schoolroom because these are the children that will be running the world in the 21st century.

I thank you all again very, very much for being here and if there is no further business, the Chairman again thanks you so much and this Subcommittee now stands adjourned.

[Whereupon, at 12:54 p.m., the Subcommittee was adjourned.]

APPENDIX A- THE WRITTEN OPENING STATEMENT OF REPRESENTATIVE CHARLIE NORWOOD FROM THE STATE OF GEORGIA

Opening Statement

Rep. Charlie Norwood

Subcommittee on Early Childhood, Youth, and Families

Hearing on August 13, 1999

"School Safety, Discipline and IDEA"

Good morning. On behalf of the Subcommittee on Early Childhood, Youth, and Families of the Committee on Education and the Workforce, I welcome everyone to today's hearing on school safety. I am pleased that Rep. Jim DeMint of South Carolina and Rep. Bobby Scoot of Virginia, both members of the Subcommittee, have joined me this morning. I am particularly pleased to see so many here today and interested in this issue.

As school is about to begin, in fact classes here at Burke County High School start on Monday, we are reminded of the tragic school shooting events of the past few years. These school shootings challenge us all to question if our system is doing all it can to ensure the safety of our students and teachers while in school. Today's hearing takes one step toward improving school safety. Additionally, we will use legislation, such as the Safe and Drug Free Schools and Communities Act and the Juvenile Crime Control and Delinquency Prevention Act, which are currently being considered by Congress, to help youth, schools, and communities to prevent violence.

When I talk to teachers, principals and school superintendents here in Burke County and in other counties of the 10th district, school safety and discipline are the greatest topics of concern. They are very concerned for the safety of the students in their classrooms. And they are very specific about one of the ways we could help them improve school safety. They need to be able to have a consistent policy for disciplining children bringing weapons to school.

Current Federal law requires that students who bring a gun to school be suspended from school for a year. We rightly have a zero tolerance policy for guns at school. However, for disabled children that rule does not apply. A disabled student receives preferential treatment when it comes to bringing weapons to school.

I have an amendment included in the Juvenile Justice bill currently in Conference that will change federal discipline requirements. The amendment would allow schools to apply a consistent discipline policy to students who bring a weapon to school. This amendment requires that any student who brings a weapon to school be expelled for one year. Yet it still allows schools to provide alternatives to students, including educational services, if the local school district decides to do so.

We need to make sure that our teachers and students are protected. We need to ensure that our children – disabled and non-disabled alike – have a safe learning environment at their schools. Learning itself will soon become a casualty if we do not do this.

I have asked today's witnesses to share with the Subcommittee their experiences and views on effective school discipline. Witnesses will explain how they approach discipline in their schools and any problems they face in appropriately and successful establishing a well-disciplined school environment.

I look forward to today's testimony and now turn to my colleague for any opening statements they may wish to offer.

APPENDIX B- THE WRITTEN OPENING STATEMENT OF REPRESENTATIVE BOBBY SCOTT FROM THE STATE OF VIRGINIA

Statement of
The Honorable Robert C. "Bobby" Scott
Early Childhood, Youth and Families Subcommittee
Waynesboro, Georgia Field Hearing
August 13, 1999

Good morning, I am very pleased to join Congressmen Norwood and DeMint in Waynesboro this morning. Mr. Norwood is an extremely valuable and important Member of this Committee that has played a leadership role on both health care and education. While we do not always share the same view on some matters, he has my sincere respect.

The topic of today's hearing – school safety and discipline – is clearly one that has captured the minds of the Americans public. With recent out-breaks of school violence seeming far to common on our evening news, clearly something must and should be done to prevent and lessen the likelihood of more senseless acts in the future. Our schools and communities should be safe for our children, whether in they are in class or at the park, mall or a business.

The key to achieving security for our children is prevention aimed at heading off violence and delinquency before it starts and continual reinvestment and reform in our educational system.

Clearly, our most important need is to continue the commitment to providing all our children, even our troubled and disruptive students with educational services. We reaffirmed this important policy, as it pertains to children with disabilities, in the 1997 reauthorization of the Individuals with Disabilities Education Act. This policy is one that we should apply to all students.

Under current law, a child with a disability who is expelled from the regular classroom for any reason is still entitled to a free and appropriate education. I know of no public policy benefit which can be achieved by sending these children to the street without any educational services, even when they are involved with weapons or drugs.

In fact, I see no benefit to the public of depriving any child of an education, whether they have a disability or not. It is difficult for any student who is expelled to catch up and graduate from school. We learned during recent Congressional hearings on youth crime that the link between crime and dropping out of school is very strong. Demographers report that 82% of state and local prisoners are high school dropouts.

We also know that there is a strong correlation between school dropout and welfare.

For children with disabilities, these correlations are even stronger. Research shows that children with disabilities who are put out of school without educational services are much less likely than other children to ever catch up, more likely to drop out, less likely to eventually graduate from high school or get a G.E.D., less likely to be employed and substantially MORE likely to be involved in crime.

A recent study reflected that as many as 73% of children with mental disabilities who do not complete high school end up with arrest records after leaving school. So, I see no reason to add to these problems by sending more children into the streets.

Some support cessation of services because they think it will have a "deterrent" effect. But those who have put any thought into this issue know that threatening a child with a one-year vacation from school will NOT serve as a deterrent to misconduct.

Although few school divisions will admit it, if cessation of services is allowed, some will cease services in order to save money. But saving money in the short run for the school system is not in the best interest of society: if any child ends up in our adult criminal justice system, the money saved under IDEA would be far surpassed in the costs to the criminal justice system, to the crime victim and to the public in general.

Some have suggested that children with disabilities who are disciplined for involvement with weapons or drugs in school should be treated just like other students involved with guns or drugs. The IDEA program is premised on the recognition that children with disabilities need more support than other students in order to attain an education. There is nothing to suggest that less support is needed when they have disciplinary problems, even if they are serious disciplinary problems. And for those focused on absolute equality of treatment, isn't the better approach to equalize upward rather than downward? Shouldn't the IDEA requirement of continuing the education of expelled children in an alternative setting be the standard rather than sending problem children to the street and transferring the problem to our social service and criminal justice systems?

In any case, school systems should not be allowed to dump uneducated children with discipline problems onto the public.

There is no reason to make matters worse by passing the problem along to other public agencies. An alternative education is certainly cheaper than jail or prison. And the phenomenal success of some states in preventing serious discipline problems from developing in the first place suggests that there are much better approaches to school safety and discipline than expulsions without educational services.

For example, in Florida disciplinary referrals dropped by 60% when schools started providing psychological services in problem situations. And in a school in Iowa, as a result of personnel training and new behavior management approaches, suspensions of children with disabilities dropped in one year from 220 to 0.

We can and should find a way to deal with our discipline problems in a way that is constructive for the child, school and community. Thank you Mr. Chairman.

APPENDIX C- THE WRITTEN STATEMENT OF DR. JULIAN COPE, SUPERINTENDENT, JASPER COUNTY PUBLIC SCHOOL SYSTEM, MONTICELLO, GEORGIA

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Superintendent

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August 13, 1999

The Honorable Mike Castle
The Honorable Charles Norwood, &
The Subcommittee on Early Childhood, Youth, and Families
U. S. House of Representatives
2181 Rayburn House Office Building
Washington, D. C. 20515-6100

Julian Cope, Ed. D.
Superintendent
Jasper County Board of Education
1125A Fred Smith St.
Monticello, GA 31064

Dear Representatives Castle, Norwood, and Committee Members:

Thank you for allowing me the privilege and the opportunity to address the Subcommittee on Early Childhood, Youth, and Families. The discipline and safety of our students is one of my top priorities as Jasper County's superintendent of schools. Without discipline, students cannot learn, and teachers simply cannot teach. I am pleased to support your efforts to increase the discipline and safety of our schools through your amendments to the Individuals with Disabilities Act (IDEA).

Jasper County is a rural school district in Middle Georgia serving approximately two thousand students in grades pre-kindergarten through twelve. The local board of education endorses a wide variety of discipline techniques that focus on prevention, intervention, and consequences/punishments for student misbehavior. In grades K-5, an emphasis is placed on conflict resolution, early intervention, and early identification of disruptive youth. These efforts are accomplished through the use of two counselors who provide individual, group counseling, and classroom guidance at both the primary and elementary schools. In addition, two part-time school psychologists work with the

Student Support Teams in the early identification and intervention of students with possible behavioral, emotional, or attentional disorders. In grades 3-12, a special emphasis is placed on the use of peer mediation, which is facilitated by the school counselors at each school. Additional intervention strategies include after-school programs, which concentrate on the remediation of at-risk and academically delayed students. Furthermore, the local board of education allows school facilities use for after-school programs sponsored by 4H and the local mental health STARS program.

Other intervention efforts in the past have included the employment of a safe schools specialist who provided mediation and conflict resolution to students at the middle and high schools. Recently our prevention efforts have shifted, and the local board of education is applying for a COPS in Schools grant to fund a resource officer who will serve students in the alternative school and at the local middle and high school. The resource officer will conduct classes in law-related education, drug and gang awareness, as well as offer additional security to the school climate. In addition to prevention, the local board has enacted and I personally have endorsed the use of many methods of punishment or consequences for disruptive behavior which include but are not limited to: Corporal punishment, after-school detention, In-school suspension, suspension, expulsion, and alternative educational programming (for students in grades 6-12).

Along with the interventions and discipline codes that have been enacted locally, there are several impediments, which interfere with the safety and consistency of discipline in our schools. Let me start by saying that I support the provision of a free and appropriate public education for all children, including children with disabilities. However, the law and regulations as they are written certainly create a double standard for disabled students who commit offences and severely limit the range of punishment that the building administrator can enact. Jasper County is currently following the provisions of the law which require functional behavioral assessments and behavior intervention plans for disabled students whose behaviors are significantly impacting their own learning or to the learning of others. I feel that we should make an effort to try understand, prevent, and be proactive in addressing the behaviors of disabled students. Furthermore, all discipline of disabled students in Jasper County is done in accordance with their Individual Education Plans (IEP), and administrators consult with our special education director on a regular basis to insure all due process is properly observed. On the other hand, despite the recent changes in the regulatory language concerning discipline under the Reauthorization of IDEA 97, school districts are still limited in the disciplinary measures they can take in addressing a serious conduct violation, even if the violation is not a manifestation of the child's disability. Under the new regulations, if a student's behavior is not a manifestation of his/her disability, and if the student is "removed" or suspended for more than ten days, the regulatory language requires systems provide services to the student, " to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward the goals in the child's IEP" 300.121(d)(2)(i)(A). Therefore, the school district is still obligated to provide an education to a disabled student whose conduct was not related to his/her disability; when, on the other hand, a non-disabled student could be expelled permanently for the same offence. The Criminal courts rarely make exceptions according to a person's disability if a crime is committed. Schools systems should be afforded the same standard. Other restrictions include limited resources for alternative educational funding. Although the

Georgia Legislature allocated additional funding for alternative educational programs, our local program lost more than 15% of the funding FY2000 it had received the previous years. This reduction in funding places further strain on local boards of education to provide resources for troubled youth, including students with disabilities who need programming outside of the "regular" school.

In closing, I applaud your efforts to support a safe and more disciplined school environment. It is my hope that the rest of the Subcommittee understands the imbalance and double standard of the current discipline standards under IDEA 97. Thank you for your time and consideration.

Sincerely,

Julian Cope

Julian Cope, Ed. D
Superintendent

Attachment: Resume

Julian T. Cope

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Position:

Superintendent of Schools, Jasper County Board of Education

Education:

Ed.D., Educational Administration, University of Alabama, 1976 - GPA 2.9 out of 3.0

M.S., Educational Administration, Troy State University, 1968 - GPA 3.3 out of 4.0

B.S., Elementary Education, Troy State University, 1964

Work Experience:

Teaching Experience - 4 years
- Grade 5 - Emma P. Flowers Elementary School, Ozark City Schools, Ozark, Alabama, 1964-67
- Grade 4, 5, & 6 Social Studies - Mayme Thompkins Elementary School, Ozark, Alabama, 1967-68

Administrative Experience - 28 years
- Superintendent, Jasper County School System, Monticello, Georgia, 1989-present
- Principal, Jasper County Comprehensive High School, Jasper County School System, Monticello, Georgia, 1980-89
- Principal, John W. Stewart Middle School, Douglas County School System, Douglasville, Georgia, 1977-80
- Principal, Grantville Public Elementary School, Coweta County School System, Newnan, Georgia, 1972-77
- Curriculum Coordinator, Chambers County School System, LaFayette, Alabama, 1971-72
- Assistant Principal, Mountain Gap Junior High School, Huntsville City Schools, Huntsville, Alabama 1969-70
- Coordinator, Education Improvement Project, Huntsville City Schools, Huntsville, Alabama, 1968-69

Professional Certification:

Georgia Certificate, D-7 Administration and Supervision, Data Collector Endorsement

Professional Organizations & Activities:

Jasper County Association of Educators
Regional Educational Services Agency, Board of Directors, Chairman
Georgia Association of Educators
Georgia Association of Educational Leaders
Georgia Association of School Superintendents, Board of Directors
American Association of School Superintendents
Georgia School Boards Association
Georgia School Public Relations Association, Board of Directors
Consortium For Educational Research in Georgia
National Education Association
Private Industry Council
Jasper County Adult Literacy Advisory Committee
Jasper County Board of Health
Friends of Public Health
Georgia Alcohol Policy Partnership
State Commissions
    Georgia Child Care Council
    Georgia Task Force on AIDS Prevention
    Professional Practices Commission

Program Participant:

"Linkages To Minority Teacher Recruitment," Fourth Annual Minority Teacher Recruitment Symposium, 9/95, Savannah, Georgia
"Minority Teacher Recruitment Issues/Strategies," Federal and Regional Resource Centers Workshop on Comprehensive Systems of Personnel Development Teleconference, 6/95
"The RX For Isolation - Consortium Arrangements," Rural Issues State Caucus, 4/95, Fort Valley State College
"Minority Teacher Recruitment - Summary of Best Practices," 4/95, Atlanta, Georgia
"Crucial Issues Strategy Session," Georgia Partnership for Excellence in Education, 3/95, Atlanta, Georgia
"Issues Affecting School Superintendents and Colleges of Education," Educational Leadership Roundtable, University of Georgia, 3/94, Athens, Georgia
"Teen Pregnancy Prevention," Georgia School Public Relations Association, 1987, Jekyll Island, Georgia

"Discipline Strategies for the Middle School," National Association of Middle School Administrators, 1979, Atlanta, Georgia

"History of and Recommendations for Teacher Retirement Systems," Georgia Association of Educational Leaders, 1978, Atlanta, Georgia

Publications:

Columnist: Jasper County Report Card, The Multi County Star, Covington, Georgia, 1990-present

Columnist: The Superintendent's Corner, The Monticello News, Monticello, Georgia, 1990-present

Dissertation: A Study of Educational Issues In Georgia As Perceived by Members of the 1975 Georgia General Assembly

Programs and Concepts from Sister School, Georgia Association of Middle School Principals Journal, Spring, 1979, Vol. 3, No. 1

Assessment of Educational Needs in Alabama Schools, Monograph, The Alabama State Department of Education, 1971

Community Service:

Lay Speaker
Masonic Lodge #50, Jasper County
Deacon, Monticello Baptist Church
Georgia Baptist Convention Advisory Committee of Mercer University
Chamber of Commerce
Community Policing
Jasper County PTA
Jasper County Citizens Advisory Committee
Jasper County Improvement League
Community Action Network, Georgia Pacific Corporation

Administrative Initiatives:

School Health:

Enlisted cooperation of Center for Disease Control, State/District/Local Health Departments to check teeth of all elementary students, 1994

Initiated Family Connection Program, 1993

Healthy Youth Initiative, 1990-present

Brought various health professionals and personalities to high school assemblies to discuss AIDS and Drug Abuse, 1989-present

Enlisted services of Regional and State Health Department in performing a study of Lyme Disease among students, 1989

Secured an annual $10,000 state grant for a Peer Counseling Program at Jasper County High School, 1988-present

Organized and chaired Task Forces
- Jasper County Drug Prevention, 1981-90
- Jasper County Teen Pregnancy Prevention, 1982-90
  - Received a Proclamation from Governor Joe Frank Harris in November 1987, for work in these areas

Finance:

Developed and maintained a responsible financial program for the Jasper County Board of Education

Successfully led two one percent sales tax referendums in 1997; a $4.6 million bond issue in 1990

Sought and received the following grants
- $30,000 for band uniforms and athletic field improvements, 1998
- $40,000 for building improvements at elementary school, 1997
- $100,000 for Youth Apprenticeship Program, 1996-98
- $40,000 for Modular Building for Technology Center, 1995
- $15,000 toward refurbishment of bleachers at high school, 1995
- $15,000 toward renovating restroom at elementary school, 1995
- $10,000 for improvement of local football, 1994-present
- $119,000 for Alternative School, 1994-98
- $100,000 for Middle School Incentive Grant, 1994-present
- $50,000 from Bell South, 1993
- $50,000 from land settlement with Department of Natural Resources, 1992
- $40,000 for parking at high school, 1992
- $50,000 for middle grade counselor over three years, 1990-92
- $60,000 for asbestos abatement, 1989

Administered facility construction and improvement projects
- $4.8 million construction of new primary school, 1992-94
- $3.3 million addition and renovation at high school, 1989-1992
- $6 million construction of new elementary school 1998-99

Curriculum:

Encouraged, supported and funded
- Hands on Math
- Effective Teaching Strategies
- Balanced Language Arts Program
- Inclusion of Special Education and Title I students in regular programs through Team Teaching and other innovative approaches
- Expanded Administrative and Instructional Technology including hardware, software, and labs

Implemented Middle School concept and provided support for innovative scheduling and instructional delivery systems at all schools
Implemented alternative school program
Sought and received Southern Association Acreditation at primary and elementary schools
Initiated school improvement focus and received state grant for funding
Implemented Accelerated Reading Program

Minority Teacher Recruitment:

Developed and executed a successful 11 point plan to recruit, hire and retain minority teachers

Community Collaboration:

Developed and maintained cooperative/collaborative relationships with Department of Education, business, legislative, and Human Service agencies

Personal:

Married: Barbara Powell
4 sons
Date of Birth: May 8, 1942

APPENDIX D- THE WRITTEN STATEMENT OF SANDRA GRIFFIN, DIRECTOR OF SPECIAL SERVICES, BURKE COUNTY PUBLIC SCHOOLS, WAYNESBORO, GEORGIA

Sandra L. Griffin, Student Services Director
Burke County School System
Post Office Box 908
Waynesboro, GA 30830
Phone: 706-554-6306 Fax: 706-554-8056 E-mail: slgriffi@bcs.burke.k12.ga.us

Testimony before Subcommittee on Early Childhood, Youth, and Families

Burke County High School; Waynesboro, Georgia; August 13, 1999

As a special educator for over twenty years, no issue has presented a greater challenge to me than that of discipline for disabled students. I agree wholeheartedly that we need flexibility in our approach to this issue. Yet I know from experience that most of the infractions we deal with on a daily basis in public schools, those that prevent special education teachers from teaching and students from learning are committed by students with mild disabilities who are fully capable of discerning appropriate from inappropriate behavior. I believe we do a disservice to disabled students when we suggest that they all need separate rules of behavior.

On one hand, Congress charges educators with the responsibility of preparing disabled youngsters for post-secondary education or jobs. We are expected to practice inclusion and mainstreaming for disabled students and show a positive return on the vast amount of money invested by taxpayers in special education. On the other hand, we are impeded from teaching disabled students to be responsible for their behavior. When the consequences for their inappropriate behavior is different than that for non-disabled peers, we send the wrong message. These same students who are educated with a double standard regarding behavior, are still expected to function in a society that allows no such distinction.

For example, when someone runs a traffic light in Waynesboro, Georgia the police officer does not check first to see if the individual has a disability. The officer simply determines if a law has been broken and applies the consequence, because possession of a driver's license carries with it a responsibility. In the workplace, employers make accommodations for disabilities as required under ADA, but employers still dismiss workers who do not comply with company guidelines for responsible behavior. Work ethics apply to all of us.

Certainly, we have disabled students with significant cognitive deficits. We have severely autistic children and those with severe emotional problems who do not have the ability to understand or meet the expectations for appropriate behavior. We need to educate and protect these children, but in a setting that ensures the safety of these students and their classmates.

I am not the person with the answer to school safety. We would all agree it is an extremely complex issue with no easy answer. However, there are some things I do know. I know when a special education teacher in Burke County confides she is so afraid of one of her students she is keeping a journal, "in case something happens to me" it is past time to do something. Especially when I have known that student for as long as he has been in school. I know he understands school rules, knows the difference between right and wrong, is capable of making choices, and has no emotional problems. I know his behavior is volitional.

We must hold all students accountable, with no exceptions and no exemptions. Violent, disruptive students do not belong in school with my children or with yours. Some tragedies cannot be avoided no matter what our resolve when we live in a country of freedom. God willing, I will never have to face the loved one of a teacher or student and say, we knew that student was dangerous, but there was nothing we could do because he was in special education. He had a right to an education, no matter what his behavior. Congress must give us the authority to remove dangerous special education students from classrooms. Representative Norwood's proposed IDEA amendment is vital to maintaining safe schools.

Today in the Burke County school system, special education students are given every reasonable opportunity to improve behavior. Our leadership at all levels is supportive and proactive in this endeavor. Functional behavioral assessments and behavior intervention plans are included in individual education plans. Manifestation determination committee meetings are convened for all special education students who are at risk of suspension for more than ten days per school year. Teachers discuss information in student handbooks to make sure each student knows the expectations for behavior. Our school psychologists and counselors work with teachers on behavior intervention strategies and classroom management. When none of these things help, we need special education services in our alternative schools for disruptive students, and we need to be able to remove dangerous students from the school setting.

I have known thousands of students with disabilities over the years. The majorities are hardworking, ambitious, successful individuals who contribute to their schools and grow up to be good and responsible citizens. Only a few proved disruptive to the learning environment, and an even smaller number could be considered dangerous. It is a mistake when the few are denied appropriate consequences for their actions. When wrongful behavior is perpetrated, it is no longer taboo. The student in the next desk then considers it as an option. We are irresponsible as adults if we allow that to happen.

Thank you for the opportunity to speak with you today on these important matters.

APPENDIX E- THE WRITTEN STATEMENT OF PATRICIA E. HENCHY, PRINCIPAL, BURKE COUNTY HIGH SCHOOL, WAYNESBORO, GEORGIA

Patricia E. Henchy, Principal
Burke County High School

Topic: School Safety

Question: How does Burke County High School discipline students including students with disabilities who violate the *Weapons in Schools Policy*?

Burke County High School has a broad range of prevention strategies that are structured, consistent and fair. The prevention efforts depend upon the "routine" discipline structure within this school.

All students receive a student handbook which addresses student expectations, rewards, code of conduct, penalties and due process procedures. The student handbook provides guidelines which are clear and concise. The handbook is covered the first week of school during five extended homeroom periods. In addition to the homeroom sessions, grade level orientation sessions are conducted to review and answer questions.

Burke County High School provides a range of instructional alternatives for students who are disruptive in the regular school program. Those instructional alternatives include but are not limited to in-school suspension for designated period(s) or days, out of school suspension for a designated time period, referral to the alternative school or referral to a tribunal.

Burke County High School has a proactive safety plan to help counteract the growing incidences of violence evident in schools across the nation and to provide a safe learning environment for students, faculty and staff.

In reference to weapons, the board policy and code of discipline state: *A student shall not possess, handle or transmit a knife, razor, ice pick, machete, pistol, rifle, shotgun, pellet gun, explosive or any other object that could be considered a weapon or an instrument that could pose a danger to the health and safety of students, teachers or any other person on school property, at any school function or enroute to and from school.* The consequences for a weapon violation include confiscation of the weapon, out of school suspension for 10 days, notification of the appropriate authorities and referral to a tribunal. A student found guilty of a violation of this policy would be expelled from school for a minimum of one calendar year. The policy includes the provision allowing the superintendent or the board to modify the expulsion requirement on a case-by-case basis.

For a student with a disability the code of discipline procedures would be followed. During the tribunal phase the diagnostic evaluation and current individualized educational plan would be studied, reviewed and taken into consideration. The policy allowing modification of expulsion based upon circumstances and facts would be considered.

Burke County High School is a disciplined, safe and violence-free institution. The mission of this faculty and staff is to challenge students academically, to provide opportunities for effective oral and written communication, to promote a safe atmosphere where students become responsible and productive members of this community, and to instill in students a feeling of self-worth through their academic and extra curricular accomplishments.

With this school mission in mind, all students at Burke County High School have many avenues and opportunities to receive assistance and support to help them improve their behavior. Those opportunities include the following:

- Availability of guidance and counseling services
- Before and after school tutoring services
- Conflict resolution opportunities
- After school clubs and organizations
- Athletic activities
- Student teacher and parent conferences
- Student behavior contracts
- Special privilege cards for academics and behavior
- Student assistance programs
- A curriculum for character and value education is in developmental stages

In closing, if each school in Georgia is to be disciplined, safe and violence-free so that academic achievement of students can be the foundation upon which the school is built, then a student with a disability who violates the W*eapons in School Policy* should be punished. The need for school safety far outweighs the individual needs of a special education student. Does a weapon in the hands of a special education student hurt less?

PERSONAL INFORMATION: Please provide the committee with a copy of your resume (or a curriculum vitae) or just answer the following questions:

a. Please list any employment, occupation, or work related experiences, and education or training which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:

Patricia E. Henehy
Principal, Burke County High School

Education

Augusta College Augusta, GA	Bachelor of Science in Education
University of Houston Houston, TX	Master of Science
Western New Mexico University Silver City, NM	Post Graduate
Augusta State University	Specialist in Education

Experience:

Twenty-seven years experience as a professional educator.

Fourteen of those years as a special education teacher. Experience in the following exceptionalities:

- Gifted Education
- Learning Disabled
- Behavior Disorders
- Mildly Mentally Handicapped

Thirteen of those years as a school administrator.

♦ Director of Special Education	Gallup, NM
♦ Assistant Principal	Richmond County Burke County
♦ Principal	Burke County

APPENDIX F- THE WRITTEN STATEMENT OF ROBERTA HATCHER, DIRECTOR OF SPECIAL EDUCATION, RICHMOND COUNTY BOARD OF EDUCATION, AUGUSTA, GEORGIA

RICHMOND COUNTY BOARD OF EDUCATION

2083 Heckle Street
Augusta, Georgia 30904-4295
(706) 737-7200

MARY L. OGLESBY
President

CHARLES G. LARKE, Ed.D.
Superintendent

ANDREW JEFFERSON
Vice - President

COMMITTEE ON EDUCATION AND THE WORKFORCE
U. S. HOUSE OF REPRESENTATIVES

PRESENTED TO:

COMMITTEE ON EDUCATION AND THE WORKFORCE, U. S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON EARLY CHILDHOOD, YOUTH, AND FAMILIES REGARDING SCHOOL SAFETY ISSUES

PRESENTED BY:

ROBERTA J. HATCHER, DIRECTOR
On BEHALF OF DR. CHARLES G. LARKE, SUPERINTENDENT
RICHMOND COUNTY BOARD OF EDUCATION
DEPARTMENT OF SPECIAL EDUCATION
3114 LAKE FOREST DRIVE
BUILDING 309
AUGUSTA, GEORGIA 30909
PHONE: (706) 731-8787
FAX: (706) 738-6445

August 13, 1999

BURKE COUNTY HIGH SCHOOL
WAYNESBORO, GEORGIA

Ladies and Gentlemen:

I appreciate the opportunity for our system, the Richmond County Board of Education, Augusta, Georgia, to testify before this illustrious Subcommittee on Early Childhood, Youth and Families on the issues of school safety, student discipline, and the Individuals with Disabilities Education Act (IDEA).

Richmond County is strongly committed to ensuring a safe learning environment for all of our 35,322 students. System supports to protect all students include:

- Increased random metal detector searches
- Drug dog searches of vehicles
- Cell phones with published hotline numbers assigned to Administrators (furnished by Bell South Mobility)
- On-Call access to Bomb-detection K-9 in conjunction with Columbia County's Sheriff's office
- Walk through building familiarization of schools by Richmond County Sheriff Department Special Weapons And Tactics Team (SWAT)
- Floor plans of all schools provided to Richmond County Sheriff Department Special Weapons And Tactics Team (SWAT)
- Final working draft to Situation, Training and Response Textbook (START) manual
- Sponsorship of Tactical Response Instructor Certification Course
- Continued emphasis on Community Policing and maintaining a friendly working environment with our students
- School uniforms for Elementary and Middle schools and easier to follow and enforce dress codes for high schools

- Additional hand-held metal detectors distributed to our high schools and middle schools (in excess of 100)
- Required student photo identification for high school students

Our schools have a strong support system to maintain discipline and appropriately sanction students who do not follow school rules. These measures include a Code of Conduct for all students including those with disabilities, which is distributed to students, parents, and school personnel. Other measures include:

- Classroom and school-wide discipline plans
- Character Education Curriculum
- Crisis Intervention Plan and Teams
- Student Support Teams (SST)
- Counselors/Psychologists
- Peer Mediation Training
- Functional Behavior Analysis/Behavior Intervention Plan (FBA/BIP)
- Pilot program (SST team to use FBA's when any students are referred for significant problem)
- Program Alternative to School Suspension for 4th –5th graders (PASS)
- Alternative School for Middle and Secondary
- Reduced Class Size
- A Strong Dress Code
- Full-time Police Officers in Middle and High Schools

- Communities in Schools Programs
- Family Connection Programs
- In-School Suspension
- Detention/Time-out Procedures (Per the IEP Team and Parental Involvement)
- Tribunal Hearings
- Expulsion

However, discipline for students with disabilities must address the behavior as a part of providing a Free Appropriate Public Education (FAPE). This IDEA requirement often creates a double standard particularly in regards to discipline for students with mild disabilities. Although it is important for school officials to consider the civil rights of all students, there needs to be some flexibility in regard to those students who have **severe** cognitive or emotional impairments, which limits their ability to make rational decisions and judgements.

In addition to the perceived dual system of discipline, other impediments to the creation of safe schools are the lack of funding for IDEA and the need for additional funding in general. When Federally mandated programs such as IDEA are fully funded, our school system will be able to hire additional counselors to allow for increased one-on-one contact with troubled children; hire additional teaching staff for alternative educational settings; increase staff and parent training in the area of discipline; and finally, provide additional teachers to reduce class size and thus lessen the likelihood of severe discipline problems.

Please do not make this an exercise in public relations. While our children probably do not know it, they are counting on you to make a difference in their lives.

We have all heard politicians and education pundits promise to improve education. Before you is the opportunity to make a significant difference in the lives of these children.

I promise the investment you make in these areas will payoff beyond your wildest dreams.

I know, and I believe that Congressman Norwood will agree, that the students in Richmond County Public Schools are worth every penny.

Thank you for your attention.

VITA

Personal Data

Name	Roberta J. Hatcher
Address	3030 Eagle Drive Augusta, Georgia 30906
Telephone	(706) 793-0504 (home) (706) 731-8787 (work)
Marital Status	Married
Date of Birth	January 13, 1952
Health	Very good, no restrictions

Education

1993	Augusta College, Ed.S., Administration and Supervision
1983	Augusta College, Instructional Supervision Certification Requirements Completed
1981	Augusta College, M.Ed., Mental Retardation
1980	Data Collection Endorsement, Augusta College
1974	Augusta College, B.S., Mental Retardation

Professional Organizations

Richmond County Association of Educators
Georgia Association of Educators
National Association of Educators
Council for Exceptional Children
Georgia Council of Administrators of Special Education

Work Experience

8/93 - Present	Director, Special Education Department Richmond County Board of Education Augusta, GA
8/87 – 6/93	Consultant, Special Education Department Richmond County Board of Education Augusta, GA
8/83 – 6/87	Lead Teacher, Special Education Department Richmond County Board of Education Augusta, GA
9/74 – 6/83	Teacher, Mildly Mentally Handicapped A. C. Griggs Elementary School Augusta, GA
9/77 – 12/82	Supervised eight student teachers from Augusta College in the area of Special Education
9/78 – 4/83	Collected assessment data for fifteen beginning and tenured teachers for the Richmond County Board of Education
11/79	Group leader for Special Education Curriculum Orientation In-Service

Special Committees

1998	System-wide Discipline Committee for Young Children in Crisis (ongoing)
1997	Student Achievement Action Team (SAAT) for Richmond County (ongoing)
	Mayor's Committee for the Employment of Individuals with Disabilities (ongoing)
1996	Individuals with Disability Education Act (IDEA) Advisory Committee for Georgia (ongoing)
1995	State-wide Task Force for Specific Learning

	Disability Programs
1994	Georgia Council of Administrators of Special Education – Task Force on Shortage of Speech Therapists
1988	Georgia Assessment Project for Teacher Certification Tests – Mentally Handicapped
1987	Special Education Curriculum Committee
1981	Educable Mentally Handicapped Instructional Materials Review Committee
1979	Special Education Curriculum Guide Committee
1978	Augusta College Student Teacher Handbook Committee
1977	Richmond County Special Education Advisory Board

APPENDIX G- THE WRITTEN STATEMENT OF MARY L. OGLESBY, CHAIRMAN OF THE BOARD, RICHMOND COUNTY BOARD OF EDUCATION, AUGUSTA, GEORGIA

Testimony Before Subcommittee on Early Childhood, Youth and Families, U. S. House of Representatives

SCHOOL SAFETY ISSUES AS RELATES TO STUDENT DISCIPLINE AND THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Burke County High School
Waynesboro, Georgia
August 13, 1999
10:30 a.m.

Lamar Samples
Director of Risk Management/School Social Worker
Emanuel County Public School System
P. O. Box 130
Swainsboro, Georgia 30401

Mr. Chairman and members of this subcommittee, I thank you for this opportunity to speak to these critical, but very difficult issues in providing a free, appropriate public education for all students in our public schools. We, in the Emanuel County School System, strive diligently to provide the best educational opportunity for all students in the least restrictive environment. While the May 1997 Reauthorization of the Individuals with Disabilities Education Act (IDEA) on the "surface" appeared to be less cumbersome and to provide educators with less restrictive options in the discipline of students with disabilities, detailed analysis of the total document reveals language that is very restrictive and extremely complex.

In the Emanuel County Public Schools, teachers and administrators are encouraged to implement strategies for discipline for inappropriate behavior at the lowest practical level and with the least interruption to the student's education experience.

For students who continue to be disruptive or commit serious offenses of the discipline codes, other discipline options are used. These options include, but are not limited to, the following strategies:

- Development of behavior management plans.
- Referral to a student support team with representatives from various agencies and professions, as appropriate.
- Assign to opportunity room or in-school suspension.
- Assignment to Saturday community service or tutorial class for 5th grade age equivalent and above students.

- Out-of-school suspension – short term (10 days or less).
- Referral to system level student discipline tribunal.
- Alternative school placement. This is a regular school hours program which also provides special education services.
- Criminal acts are reported to the appropriate law enforcement agencies.
- Presently organizing a Student Transition and Recovery (STAR) program. This program provides before and after school military style discipline and keeps the students in regular classes during school hours.
- Long-term suspension or expulsion (more than 10 days). This option is only available through the system discipline tribunal. In most situations, the student is given the option of applying for enrollment in the alternative school program which provides special education services.

Due process is carefully followed in all these strategies. Any long-term suspension or expulsion carries a right of appeal. Serious discipline situations are reviewed for due process and compliance with policies, state and federal laws, and regulations.

The above strategies work very well resulting in very few students ever reaching the point of being denied an education because of their behavior. Incidents involving weapons on school property or at school events, generally result in long-term suspension or expulsion for one year. In some situations, these students are given the option of applying for enrollment in the alternative school program.

The process works very well until we have to ask if the student is an IDEA or 504 student. The very question implies some kind of special treatment or discrimination against someone, especially when the behavior is not a manifestation of the disability. Students with disabilities are often just as dangerous as students without disabilities.

The reauthorization of IDEA provides that if the behavior is not a manifestation of the disability, the student can be disciplined as any other student. However, language was added that says the student must receive services. The services must enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the individual education plan.

The due process required for discipline of IDEA students who may be a serious danger to themselves or others, is very complex. As long as the parent is cooperative, there can usually be a reasonable solution. If the parent is uncooperative, the burden of proof shifts to the system and requires a more than preponderance of the evidence that maintaining a child in the current placement is substantially likely to result in injury to self or others. For violent behavior and weapons offenses, the system personnel need the right to use their judgment under the same due process rights and rights of appeal as any other student, regardless of the manifestation of disability.

Emanuel County Schools in collaboration with other agencies, provide many services to assist students and parents in the students' educational process.

These services include, but are not limited to the following:

- Counseling services at every school site, including the alternative school program.
- Nurse services at all school sites.
- Social work services at the system level.
- School resource officer services.
- Free family counseling services.
- Student assistance program counselors at the school sites.
- Child advocacy center to provide support and counseling in child abuse situations.
- Close cooperation and direct support of the local district attorney's department, police and sheriff's departments, regional drug task force an department of juvenile justice. These departments provide assistance in conduct of special classes, counseling students on crime-related matters, conduct of school safety checks, etc.
- Interagency staffing for students and parents to minimize redundant services and to collaborate in all areas of service and expertise.
- Multidisciplinary staffings for child abuse victims, perpetrators and famili
- Health check physicals and health counseling at the school sites or referr as appropriate.
- Emanuel County Youth Enrichment program. This program provides Saturday community service, academic tutorial/make-up classes, and parenting classes.

- Special education qualified teacher(s) for the alternative school program.
- Homelessness liaison services for homeless students and families.
- Migrant education specialist services.

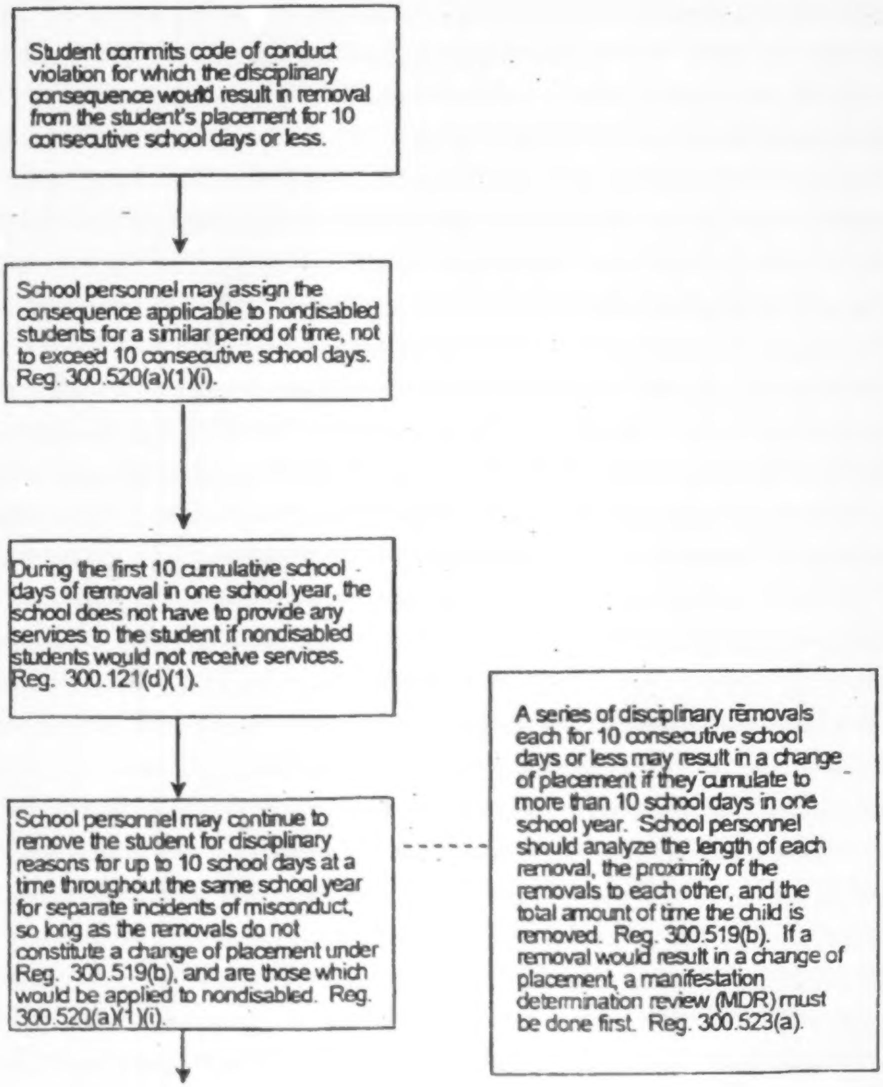
Yet to be seen is how the courts will interpret this complex and confusing law and the accompanying regulations. I have enclosed a series of four charts prepared for a school board attorney seminar held May 21, 1999, at Mercer University. This is a major attempt to simplify the new IDEA regulations. It is the best attempt I have seen. (see attachment)

After you have read the charts, imagine yourself in the position of a school site administrator whose job it is to improve the education process, improve test scores, provide a free, appropriate education for all students, and comply with the myriad of laws and regulations impacting education today. Treating violent IDEA/504 students differently from other students, can lead to confusion, indecisiveness, and reluctance to act for fear of being found liable for the action taken, even though acting in good faith.

We, in Emanuel County School System, appreciate your efforts in addressing this critical subject that can greatly impact school safety and academic progress for all students.

Chart 1 ATTACHMENT

Code of Conduct Violations By Students with Disabilities Resulting in Disciplinary Consequences of 10 School Days or Less (Revised)



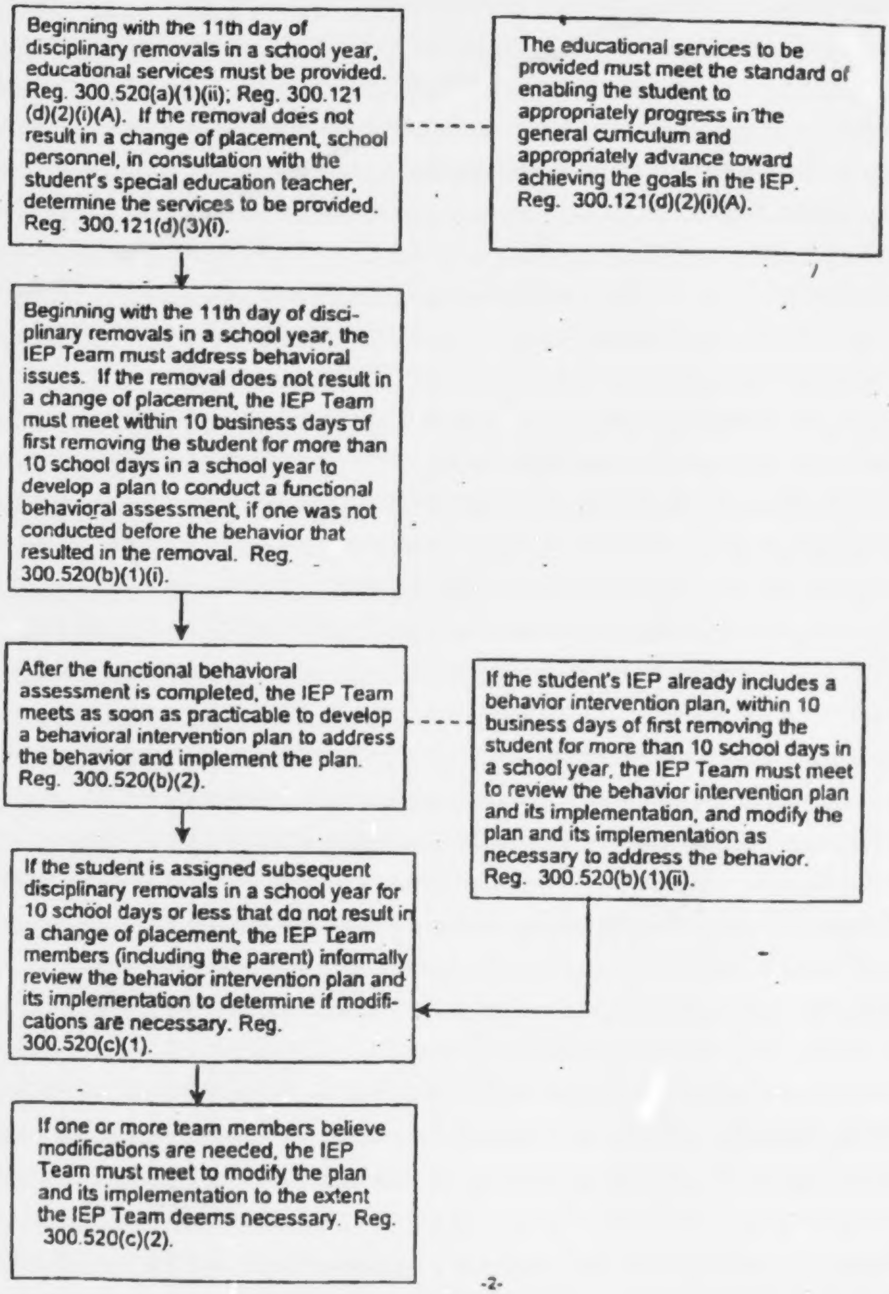
Student commits code of conduct violation for which the disciplinary consequence would result in removal from the student's placement for 10 consecutive school days or less.

School personnel may assign the consequence applicable to nondisabled students for a similar period of time, not to exceed 10 consecutive school days. Reg. 300.520(a)(1)(i).

During the first 10 cumulative school days of removal in one school year, the school does not have to provide any services to the student if nondisabled students would not receive services. Reg. 300.121(d)(1).

School personnel may continue to remove the student for disciplinary reasons for up to 10 school days at a time throughout the same school year for separate incidents of misconduct, so long as the removals do not constitute a change of placement under Reg. 300.519(b), and are those which would be applied to nondisabled. Reg. 300.520(a)(1)(i).

A series of disciplinary removals each for 10 consecutive school days or less may result in a change of placement if they cumulate to more than 10 school days in one school year. School personnel should analyze the length of each removal, the proximity of the removals to each other, and the total amount of time the child is removed. Reg. 300.519(b). If a removal would result in a change of placement, a manifestation determination review (MDR) must be done first. Reg. 300.523(a).



Beginning with the 11th day of disciplinary removals in a school year, educational services must be provided. Reg. 300.520(a)(1)(ii); Reg. 300.121 (d)(2)(i)(A). If the removal does not result in a change of placement, school personnel, in consultation with the student's special education teacher, determine the services to be provided. Reg. 300.121(d)(3)(i).

The educational services to be provided must meet the standard of enabling the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(A).

Beginning with the 11th day of disciplinary removals in a school year, the IEP Team must address behavioral issues. If the removal does not result in a change of placement, the IEP Team must meet within 10 business days of first removing the student for more than 10 school days in a school year to develop a plan to conduct a functional behavioral assessment, if one was not conducted before the behavior that resulted in the removal. Reg. 300.520(b)(1)(i).

After the functional behavioral assessment is completed, the IEP Team meets as soon as practicable to develop a behavioral intervention plan to address the behavior and implement the plan. Reg. 300.520(b)(2).

If the student's IEP already includes a behavior intervention plan, within 10 business days of first removing the student for more than 10 school days in a school year, the IEP Team must meet to review the behavior intervention plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. Reg. 300.520(b)(1)(ii).

If the student is assigned subsequent disciplinary removals in a school year for 10 school days or less that do not result in a change of placement, the IEP Team members (including the parent) informally review the behavior intervention plan and its implementation to determine if modifications are necessary. Reg. 300.520(c)(1).

If one or more team members believe modifications are needed, the IEP Team must meet to modify the plan and its implementation to the extent the IEP Team deems necessary. Reg. 300.520(c)(2).

Chart 2

Code of Conduct Violations By Students With Disabilities for Which Recommended Disciplinary Consequences Would Result in Change of Placement for More Than Ten School Days (Excluding Drug and Weapon Offenses) (Revised)

Student violates code of conduct and the recommended disciplinary consequence would result in a removal from the current educational placement for more than 10 consecutive school days (suspension, in-school suspension, alternate placement, expulsion). This constitutes a change of placement. Reg. 300.519(a).

The recommended disciplinary consequence may be for a removal from the current educational placement for less than 10 consecutive school days, but may constitute a change of placement because the student has already been removed for disciplinary reasons for 10 or more school days in the current school year, and the length of each removal, their proximity to each other, and the total amount of time the student has been removed result in a change of placement. Reg. 300.519(b).

↓

School personnel may remove from current educational placement for 10 school days or less (Reg. 300.520(a)(1)(i)), and recommend further discipline according to the code of conduct. (The 10-day-or-less alternative must be one equally applicable to nondisabled. See Chart 1 for educational services to be provided during a short removal.) If a criminal act has been committed, charges may be filed and law enforcement authorities to whom the crime was reported must be provided special education and disciplinary records to the extent disclosure is permitted by FERPA. Sec. 1415(k)(9). Reg. 300.529

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At time decision is made to take this action, school personnel must notify parent of decision and provide procedural safeguards notice in Reg. 300.504. Sec. 1415(k)(4)(A)(i); Reg. 300.523(a)(1).

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Within 10 business days, IEP Team and other qualified personnel must meet and review relationship between disability and the behavior subject to disciplinary action (manifestation determination review - MDR). Sec. 1415(k)(4)(A); Reg. 300.523(a)(2), (b). If there has been no previous functional behavioral assessment and creation of a behavior intervention plan the IEP Team must develop an assessment plan. Reg. 300.520(b)(1)(i). (As soon as practicable after the assessment, the IEP Team must meet again to develop and implement the behavior intervention plan. Reg. 300.520(b)(2)). If the IEP contains a behavior intervention plan, the IEP Team reviews the plan and its implementation and modifies them as necessary to address the behavior. Reg. 300.520(b)(1)(ii).

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For the MDR, the IEP Team must look at all information relevant to the behavior subject to discipline such as evaluation and diagnostic results, including such results and other relevant information from the parent, observations of the student and the student's IEP and placement. The misbehavior is not a manifestation of the disability if the IEP Team finds that in relationship to the misbehavior subject to discipline.

- the IEP and placement were appropriate;
- consistent with the content of the student's IEP and placement, special education services, supplementary aids and services and behavior intervention strategies were actually provided;
- the disability did not impair the ability of the student to understand the impact and consequences of the misbehavior; and
- the disability did not impair the ability of the student to control the misbehavior.
- Sec. 1415(k)(4)(C); Reg. 300.523(c).

If the IEP Team determines any of the standards were not met, the misbehavior was a manifestation of the disability, and no punishment may be assessed. Reg. 300.523(d). If IEP Team identifies deficiencies in IEP, placement or implementation, it must take immediate steps to remedy. Reg. 300.523(f).

-or -

If the IEP Team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student except that the student must continue to be provided a free appropriate public education. Sec. 1415(K)(5)(A); Sec. 1412(a)(1)(A). Reg. 300.121(a); Reg. 300.524(a). The campus must ensure that special education and disciplinary records are transmitted for consideration by the school district person making the final determination regarding the disciplinary action. Sec. 1415(k)(5)(B); Reg. 300.524(b).

Parent may appeal a finding that the misbehavior was not a manifestation of the disability. The hearing is expedited before a special education hearing officer who applies the same standards as the IEP Team. Sec. 1415(k)(6); Reg. 300.525(a), (b).

If IEP Team finds no manifestation and changes placement to comply with the disciplinary recommendation, parent may appeal the placement decision. The hearing is expedited before a special education hearing officer.
Sec. 1415(k)(6)(A); Reg. 300.525(a)(2).

During appeals, stay put applies. Reg. 300.524(c). If child is substantially likely to injure self or others in the current placement, the school can request an expedited hearing and request the hearing officer to remove to an interim alternative educational placement for up to 45 days. Standards to be met are those in Sec. 1415(k)(2) and Reg. 300.521.

The standard the educational services must meet is that they enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(B); Reg. 300.524(a). The IEP team must determine what services are necessary to meet this standard. Reg. 300.121(d)(3)(ii).

Chart 3

Drawing and Weapon Offenses by Students With Disabilities (Revised)

Student carries weapon to school, or possesses, uses, sells or solicits sale of illegal-drug or controlled substance on school property or at a school function.

School personnel may remove from current educational placement for 10 school days or less, and recommend further discipline according to the code of conduct. Sec. 1415(k)(1)(A)(i); Reg. 300.520 (a)(1)(i). (The 10-day-or-less alternative must be one equally applicable to nondisabled. See Chart 1 for educational services to be provided during a short removal.) If criminal act has been committed, charges may be filed and special education and disciplinary records shall be transmitted to law enforcement authorities to whom the crime was reported, to the extent disclosure is permitted by FERPA. Sec. 1415(k)(9); Reg. 300.529.

At time decision is made to take this disciplinary action, school personnel must notify parent of decision and provide procedural safeguards notice in Reg. 300.504. Sec. 1415(k)(4)(A)(i); Reg. 300.523(a)(1).

Within 10 business days, IEP Team must meet and may extend the removal by placing student in appropriate interim alternative educational setting applicable to nondisabled student for same amount of time nondisabled student would be assigned but not more than 45 calendar days. Sec. 1415 (k)(1)(A)(ii) and (3)(A); Reg. 300.520(a)(2); Reg. 300.522(a). IEP Team must review the behavior intervention plan, if one exists, and its implementation and modify, as necessary, to address behavior. Reg. 300.520 (b)(1)(ii). If there has been no previous functional behavioral assessment and creation of behavior intervention plan, IEP Team must develop assessment plan. Sec. 1415 (k)(1)(B); Reg. 300.520(b)(1)(i). (As soon as practicable after the assessment, the IEP Team must meet again to develop and implement the behavior intervention plan. Reg. 300.520(b)(2)). The IEP Team and other qualified personnel must review the relationship between disability and the behavior subject to disciplinary action (manifestation determination review-MDR). Sec. 1415(k)(4)(A); Reg. 300.523(a)(2), (b).

Illegal drug – a controlled substance. Excludes legally used and possessed prescription drugs. Sec. 1415(k)(10)(B); Reg. 300.520(d)(2).

Controlled substance – drug or substance in 21 U.S.C. § 812(c), Schedules I.-V. Sec. 1415(k)(10)(A); Reg. 300.520(d)(1).

Weapon – A firearm and more. Something used for or readily capable of causing death or serious bodily injury. Excludes pocket knife with blade of 2-1/2 inches or less. Sec. 1415(k)(10)(D); Reg. 300.520(d)(3).

The 45 day alternative interim placement must:

- enable student to progress in general curriculum, although in another setting;
- enable the student to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP; and
- include services and modifications designed to address the drug or weapon offense so that it does not recur. Sec. 1415(k)(3)(B); Reg. 300.522; Reg. 300.121(d)(2)(ii).

Comments to regulations: Student may be subject to multiple 45 day interim placements for separate drug and weapon offenses. The 45 day interim placement may be completed even if drug or weapon offense was manifestation of disability. If misbehavior was not a manifestation of disability, regular disciplinary consequence can be applied in addition to 45 day interim placement.

For the MDR, the IEP Team must look at all information relevant to the behavior subject to discipline such as evaluation and diagnostic results, including such results and other relevant information from the parent, observations of the student and the student's IEP and placement. The misbehavior is not a manifestation of the disability if the IEP Team finds that in relationship to the misbehavior subject to discipline.

- the IEP and placement were appropriate;
- consistent with the content of the student's IEP and placement, special education services, supplementary aids and services and behavior intervention strategies were actually provided;
- the disability did not impair the ability of the student to understand the impact and consequences of the misbehavior; and
- the disability did not impair the ability of the student to control the misbehavior.

Sec. 1415(k)(4)(C); Reg. 300.523(c).

If the IEP Team determines any of the standards were not met, the misbehavior was a manifestation of the disability, and no punishment may be assessed. Reg. 300.523(d). If IEP Team identified deficiencies in IEP, placement, or implementation, it must take immediate steps to remedy. Reg. 300.523(f).

-or -

If the IEP Team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student except that the student must continue to be provided a free appropriate public education. Sec. 1415(k)(5)(A); Sec. 1412(a)(1)(A). Reg. 300.121(a); Reg. 300.524(a). The campus must ensure that special education and disciplinary records are transmitted for consideration by the school district person making the final determination regarding the disciplinary action. Sec. 1415(k)(5)(B); Reg. 300.524(b).

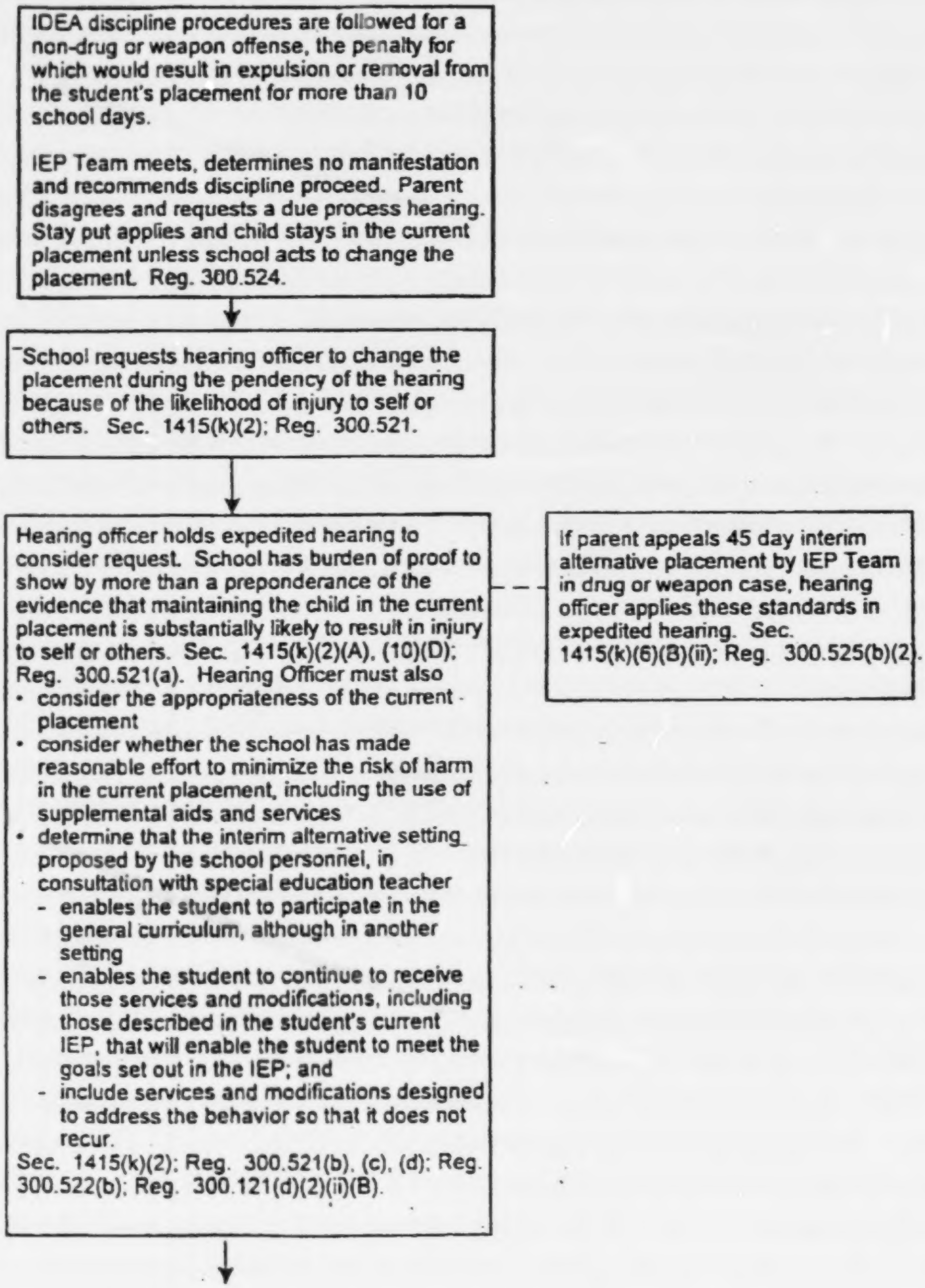
Parent may appeal a finding that the misbehavior was not a manifestation of the disability. The hearing is expedited before a special education hearing officer who applies the same standards as the IEP Team. Sec. 1415(k)(6); Reg. 300.525(a), (b).

Parent may appeal decision to place student in 45 day interim placement. The hearing is expedited before a special education hearing officer who applies the standards regarding a dangerous student in Reg. 300.521. Sec. 1415(k)(6)(B)(ii); Reg. 300.525(b)(2).

When a parent requests a hearing in a drug or weapon case to challenge the interim alternative placement or the manifestation determination, student remains in interim placement until decision of hearing officer or 45 days expires, whichever comes first unless the parent and school agree otherwise. Reg. 300.526(a). Then student returns to current placement (defined as placement prior to interim alternative educational setting). School can ask for expedited hearing before special education hearing officer to prevent this return if the student is substantially likely to injure self or others. Reg. 300.526(b), (c). The hearing officer applies the standards in Reg. 300.121. Reg. 300.526(c). Hearing officer can order another placement for up to 45 days. Reg. 300.526(c)(3). This procedure may be repeated as necessary. Sec. 1415(k)(7); Reg. 300.526(c)(4).

The standard the educational services must meet is that they enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(B); Reg. 300.524(a). The IEP team must determine what services are necessary to meet this standard. Reg. 300.121(d)(3)(ii).

Chart 4
Students Dangerous to Self or Others (Revised)



IDEA discipline procedures are followed for a non-drug or weapon offense, the penalty for which would result in expulsion or removal from the student's placement for more than 10 school days.

IEP Team meets, determines no manifestation and recommends discipline proceed. Parent disagrees and requests a due process hearing. Stay put applies and child stays in the current placement unless school acts to change the placement. Reg. 300.524.

School requests hearing officer to change the placement during the pendency of the hearing because of the likelihood of injury to self or others. Sec. 1415(k)(2); Reg. 300.521.

Hearing officer holds expedited hearing to consider request. School has burden of proof to show by more than a preponderance of the evidence that maintaining the child in the current placement is substantially likely to result in injury to self or others. Sec. 1415(k)(2)(A), (10)(D); Reg. 300.521(a). Hearing Officer must also

- consider the appropriateness of the current placement
- consider whether the school has made reasonable effort to minimize the risk of harm in the current placement, including the use of supplemental aids and services
- determine that the interim alternative setting proposed by the school personnel, in consultation with special education teacher
  - enables the student to participate in the general curriculum, although in another setting
  - enables the student to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in the IEP; and
  - include services and modifications designed to address the behavior so that it does not recur.

Sec. 1415(k)(2); Reg. 300.521(b), (c), (d); Reg. 300.522(b); Reg. 300.121(d)(2)(ii)(B).

If parent appeals 45 day interim alternative placement by IEP Team in drug or weapon case, hearing officer applies these standards in expedited hearing. Sec. 1415(k)(6)(B)(ii); Reg. 300.525(b)(2).

If all requirements are met, hearing officer may order a change of placement to the interim alternative educational setting for up to 45 days. Sec. 1415(k)(2); Reg. 300.521.

Student returns to his or her current placement (the placement prior to the interim alternative educational setting) at end of 45 days if no decision has been issued by hearing officer in pending due process hearing. If school believes it would be dangerous for student to return to current placement while hearing is still pending, school may request another expedited hearing to again place student in 45 day interim placement while hearing continues to be pending. Reg. 300.526(b), (c)(4). Hearing officer holds same type of hearing initially held when hearing officer ordered first 45 day interim placement. Sec. 1415(k)(7); Reg. 300.526. Any subsequent 45 day interim setting must meet the standards in Reg. 300.522.

APPENDIX H- THE WRITTEN STATEMENT OF LAMAR SAMPLES, DIRECTOR OF RISK MANAGEMENT/SCHOOL SOCIAL WORKER, EMANUEL COUNTY PUBLIC SCHOOL SYSTEM, SWAINSBORO, GEORGIA

Testimony Before Subcommittee on Early Childhood, Youth and Families, U. S. House of Representatives

SCHOOL SAFETY ISSUES AS RELATES TO STUDENT DISCIPLINE AND THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Burke County High School
Waynesboro, Georgia
August 13, 1999
10:30 a.m.

Lamar Samples
Director of Risk Management/School Social Worker
Emanuel County Public School System
P. O. Box 130
Swainsboro, Georgia 30401

(113)

Mr. Chairman and members of this subcommittee, I thank you for this opportunity to speak to these critical, but very difficult issues in providing a free, appropriate public education for all students in our public schools. We, in the Emanuel County School System, strive diligently to provide the best educational opportunity for all students in the least restrictive environment. While the May 1997 Reauthorization of the Individuals with Disabilities Education Act (IDEA) on the "surface" appeared to be less cumbersome and to provide educators with less restrictive options in the discipline of students with disabilities, detailed analysis of the total document reveals language that is very restrictive and extremely complex.

In the Emanuel County Public Schools, teachers and administrators are encouraged to implement strategies for discipline for inappropriate behavior at the lowest practical level and with the least interruption to the student's education experience.

For students who continue to be disruptive or commit serious offenses of the discipline codes, other discipline options are used. These options include, but are not limited to, the following strategies:

- Development of behavior management plans.
- Referral to a student support team with representatives from various agencies and professions, as appropriate.
- Assign to opportunity room or in-school suspension.
- Assignment to Saturday community service or tutorial class for 5th grade age equivalent and above students.

- Out-of-school suspension – short term (10 days or less).
- Referral to system level student discipline tribunal.
- Alternative school placement. This is a regular school hours program which also provides special education services.
- Criminal acts are reported to the appropriate law enforcement agencies.
- Presently organizing a Student Transition and Recovery (STAR) program. This program provides before and after school military style discipline and keeps the students in regular classes during school hours.
- Long-term suspension or expulsion (more than 10 days). This option is only available through the system discipline tribunal. In most situations, the student is given the option of applying for enrollment in the alternative school program which provides special education services.

Due process is carefully followed in all these strategies. Any long-term suspension or

expulsion carries a right of appeal. Serious discipline situations are reviewed for due process and compliance with policies, state and federal laws, and regulations.

The above strategies work very well resulting in very few students ever reaching the point of being denied an education because of their behavior. Incidents involving weapons on school property or at school events, generally result in long-term suspension or expulsion for one year. In some situations, these students are given the option of applying for enrollment in the alternative school program.

The process works very well until we have to ask if the student is an IDEA or 504 student. The very question implies some kind of special treatment or discrimination against someone, especially when the behavior is not a manifestation of the disability. Students with disabilities are often just as dangerous as students without disabilities.

The reauthorization of IDEA provides that if the behavior is not a manifestation of the disability, the student can be disciplined as any other student. However, language was added that says the student must receive services. The services must enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the individual education plan.

The due process required for discipline of IDEA students who may be a serious danger to themselves or others, is very complex. As long as the parent is cooperative, there can usually be a reasonable solution. If the parent is uncooperative, the burden of proof shifts to the system and requires a more than preponderance of the evidence that maintaining a child in the current placement is substantially likely to result in injury to self or others. For violent behavior and weapons offenses, the system personnel need the right to use their judgment under the same due process rights and rights of appeal as any other student, regardless of the manifestation of disability.

Emanuel County Schools in collaboration with other agencies, provide many services to assist students and parents in the students' educational process.

These services include, but are not limited to the following:

- Counseling services at every school site, including the alternative sch program.
- Nurse services at all school sites.
- Social work services at the system level.
- School resource officer services.
- Free family counseling services.
- Student assistance program counselors at the school sites.
- Child advocacy center to provide support and counseling in child abu situations.
- Close cooperation and direct support of the local district attorney's department, police and sheriff's departments, regional drug task force department of juvenile justice. These departments provide assistance conduct of special classes, counseling students on crime-related matte conduct of school safety checks, etc.
- Interagency staffing for students and parents to minimize redundant services and to collaborate in all areas of service and expertise.
- Multidisciplinary staffings for child abuse victims, perpetrators and far
- Health check physicals and health counseling at the school sites or ref as appropriate.
- Emanuel County Youth Enrichment program. This program provides Saturday community service, academic tutorial/make-up classes, and parenting classes.

- Special education qualified teacher(s) for the alternative school program.
- Homelessness liaison services for homeless students and families.
- Migrant education specialist services.

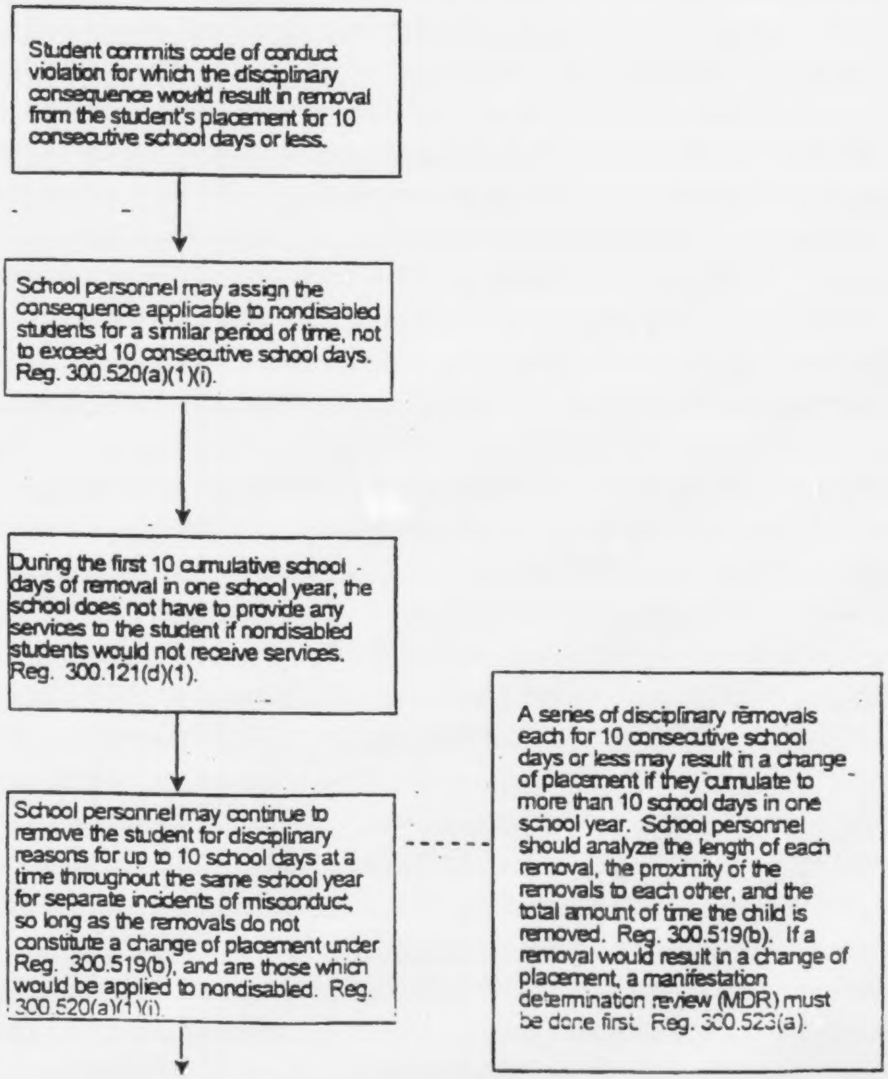
Yet to be seen is how the courts will interpret this complex and confusing law and the accompanying regulations. I have enclosed a series of four charts prepared for a school board attorney seminar held May 21, 1999, at Mercer University. This is a major attempt to simplify the new IDEA regulations. It is the best attempt I have seen. (see attachment)

After you have read the charts, imagine yourself in the position of a school site administrator whose job it is to improve the education process, improve test scores, provide a free, appropriate education for all students, and comply with the myriad of laws and regulations impacting education today. Treating violent IDEA/504 students differently from other students, can lead to confusion, indecisiveness, and reluctance to act for fear of being found liable for the action taken, even though acting in good faith.

We, in Emanuel County School System, appreciate your efforts in addressing this critical subject that can greatly impact school safety and academic progress fcr all students.

Chart 1 ATTACHMENT

Code of Conduct Violations By Students with Disabilities Resulting in Disciplinary Consequences of 10 School Days or Less (Revised)



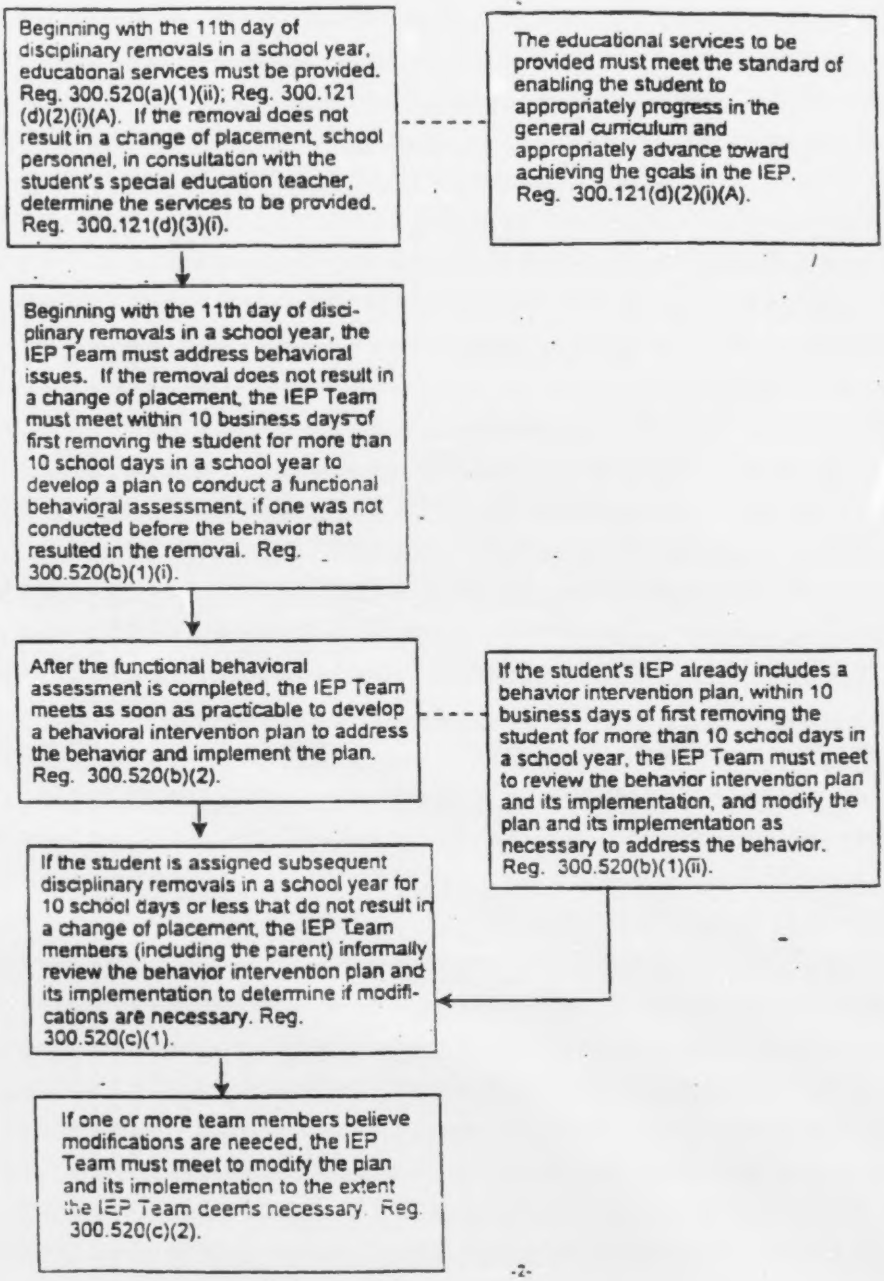
Student commits code of conduct violation for which the disciplinary consequence would result in removal from the student's placement for 10 consecutive school days or less.

School personnel may assign the consequence applicable to nondisabled students for a similar period of time, not to exceed 10 consecutive school days. Reg. 300.520(a)(1)(i).

During the first 10 cumulative school days of removal in one school year, the school does not have to provide any services to the student if nondisabled students would not receive services. Reg. 300.121(d)(1).

School personnel may continue to remove the student for disciplinary reasons for up to 10 school days at a time throughout the same school year for separate incidents of misconduct, so long as the removals do not constitute a change of placement under Reg. 300.519(b), and are those which would be applied to nondisabled. Reg. 300.520(a)(1)(i).

A series of disciplinary removals each for 10 consecutive school days or less may result in a change of placement if they cumulate to more than 10 school days in one school year. School personnel should analyze the length of each removal, the proximity of the removals to each other, and the total amount of time the child is removed. Reg. 300.519(b). If a removal would result in a change of placement, a manifestation determination review (MDR) must be done first. Reg. 300.523(a).



Beginning with the 11th day of disciplinary removals in a school year, educational services must be provided. Reg. 300.520(a)(1)(ii); Reg. 300.121 (d)(2)(i)(A). If the removal does not result in a change of placement, school personnel, in consultation with the student's special education teacher, determine the services to be provided. Reg. 300.121(d)(3)(i).

The educational services to be provided must meet the standard of enabling the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(A).

Beginning with the 11th day of disciplinary removals in a school year, the IEP Team must address behavioral issues. If the removal does not result in a change of placement, the IEP Team must meet within 10 business days of first removing the student for more than 10 school days in a school year to develop a plan to conduct a functional behavioral assessment, if one was not conducted before the behavior that resulted in the removal. Reg. 300.520(b)(1)(i).

After the functional behavioral assessment is completed, the IEP Team meets as soon as practicable to develop a behavioral intervention plan to address the behavior and implement the plan. Reg. 300.520(b)(2).

If the student's IEP already includes a behavior intervention plan, within 10 business days of first removing the student for more than 10 school days in a school year, the IEP Team must meet to review the behavior intervention plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. Reg. 300.520(b)(1)(ii).

If the student is assigned subsequent disciplinary removals in a school year for 10 school days or less that do not result in a change of placement, the IEP Team members (including the parent) informally review the behavior intervention plan and its implementation to determine if modifications are necessary. Reg. 300.520(c)(1).

If one or more team members believe modifications are needed, the IEP Team must meet to modify the plan and its implementation to the extent the IEP Team deems necessary. Reg. 300.520(c)(2).

Chart 2

Code of Conduct Violations By Students With Disabilities for Which Recommended Disciplinary Consequences Would Result in Change of Placement for More Than Ten School Days (Excluding Drug and Weapon Offenses) (Revised)

Student violates code of conduct and the recommended disciplinary consequence would result in a removal from the current educational placement for more than 10 consecutive school days (suspension, in-school suspension, alternate placement, expulsion). This constitutes a change of placement. Reg. 300.519(a).

The recommended disciplinary consequence may be for a removal from the current educational placement for less than 10 consecutive school days, but may constitute a change of placement because the student has already been removed for disciplinary reasons for 10 or more school days in the current school year, and the length of each removal, their proximity to each other, and the total amount of time the student has been removed result in a change of placement. Reg. 300.519(b).

School personnel may remove from current educational placement for 10 school days or less (Reg. 300.520(a)(1)(i)), and recommend further discipline according to the code of conduct. (The 10-day-or-less alternative must be one equally applicable to nondisabled. See Chart 1 for educational services to be provided during a short removal.) If a criminal act has been committed, charges may be filed and law enforcement authorities to whom the crime was reported must be provided special education and disciplinary records to the extent disclosure is permitted by FERPA. Sec. 1415(k)(9). Reg. 300.529

At time decision is made to take this action, school personnel must notify parent of decision and provide procedural safeguards notice in Reg. 300.504. Sec. 1415(k)(4)(A)(i); Reg. 300.523(a)(1).

Within 10 business days, IEP Team and other qualified personnel must meet and review relationship between disability and the behavior subject to disciplinary action (manifestation determination review - MDR). Sec. 1415(k)(4)(A); Reg. 300.523(a)(2), (b). If there has been no previous functional behavioral assessment and creation of a behavior intervention plan the IEP Team must develop an assessment plan. Reg. 300.520(b)(1)(i). (As soon as practicable after the assessment, the IEP Team must meet again to develop and implement the behavior intervention plan. Reg. 300.520(b)(2)). If the IEP contains a behavior intervention plan, the IEP Team reviews the plan and its implementation and modifies them as necessary to address the behavior. Reg. 300.520(b)(1)(ii).

For the MDR, the IEP Team must look at all information relevant to the behavior subject to discipline such as evaluation and diagnostic results, including such results and other relevant information from the parent, observations of the student and the student's IEP and placement. The misbehavior is not a manifestation of the disability if the IEP Team finds that in relationship to the misbehavior subject to discipline.

- the IEP and placement were appropriate;
- consistent with the content of the student's IEP and placement, special education services, supplementary aids and services and behavior intervention strategies were actually provided;
- the disability did not impair the ability of the student to understand the impact and consequences of the misbehavior, and
- the disability did not impair the ability of the student to control the misbehavior.
- Sec. 1415(k)(4)(C); Reg. 300.523(c).

If the IEP Team determines any of the standards were not met, the misbehavior was a manifestation of the disability, and no punishment may be assessed. Reg. 300.523(d). If IEP Team identifies deficiencies in IEP, placement or implementation, it must take immediate steps to remedy. Reg. 300.523(f).

-or -

If the IEP Team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student except that the student must continue to be provided a free appropriate public education. Sec. 1415(K)(5)(A); Sec. 1412(a)(1)(A). Reg. 300.121(a); Reg. 300.524(a). The campus must ensure that special education and disciplinary records are transmitted for consideration by the school district person making the final determination regarding the disciplinary action. Sec. 1415(k)(5)(B); Reg. 300.524(b).

Parent may appeal a finding that the misbehavior was not a manifestation of the disability. The hearing is expedited before a special education hearing officer who applies the same standards as the IEP Team. Sec. 1415(k)(6); Reg. 300.525(a), (b).

If IEP Team finds no manifestation and changes placement to comply with the disciplinary recommendation, parent may appeal the placement decision. The hearing is expedited before a special education hearing officer. Sec. 1415(k)(6)(A); Reg. 300.525(a)(2).

During appeals, stay put applies. Reg. 300.524(c). If child is substantially likely to injure self or others in the current placement, the school can request an expedited hearing and request the hearing officer to remove to an interim alternative educational placement for up to 45 days. Standards to be met are those in Sec. 1415(k)(2) and Reg. 300.521.

The standard the educational services must meet is that they enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(B); Reg. 300.524(a). The IEP team must determine what services are necessary to meet this standard. Reg. 300.121(d)(3)(ii).

Chart 3

Drug and Weapon Offenses by Students With Disabilities (Revised)

Student carries weapon to school, or possesses, uses, sells or solicits sale of illegal-drug or controlled substance on school property or at a school function.

Illegal drug – a controlled substance. Excludes legally used and possessed prescription drugs. Sec. 1415(k)(10)(B); Reg. 300.520(d)(2).

Controlled substance – drug or substance in 21 U.S.C. § 812(c), Schedules I.-V. Sec. 1415(k)(10)(A); Reg. 300.520(d)(1).

Weapon – A firearm and more. Something used for or readily capable of causing death or serious bodily injury. Excludes pocket knife with blade of 2-1/2 inches or less. Sec. 1415(k)(10)(D); Reg. 300.520(d)(3).

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School personnel may remove from current educational placement for 10 school days or less, and recommend further discipline according to the code of conduct. Sec. 1415(k)(1)(A)(i); Reg. 300.520 (a)(1)(i). (The 10-day-or-less alternative must be one equally applicable to nondisabled. See Chart 1 for educational services to be provided during a short removal.) If criminal act has been committed, charges may be filed and special education and disciplinary records shall be transmitted to law enforcement authorities to whom the crime was reported, to the extent disclosure is permitted by FERPA. Sec. 1415(k)(9); Reg. 300.529.

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At time decision is made to take this disciplinary action, school personnel must notify parent of decision and provide procedural safeguards notice in Reg. 300.504. Sec. 1415(k)(4)(A)(i); Reg. .00.523(a)(1).

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Within 10 business days, IEP Team must meet and may extend the removal by placing student in appropriate interim alternative educational setting applicable to nondisabled student for same amount of time nondisabled student would be assigned but not more than 45 calendar days. Sec. 1415 (k)(1)(A)(ii) and (3)(A); Reg. 300.520(a)(2); Reg. 300.522(a). IEP Team must review the behavior intervention plan, if one exists, and its implementation and modify, as necessary, to address behavior. Reg. 300.520 (b)(1)(ii). If there has been no previous functional behavioral assessment and creation of behavior intervention plan, IEP Team must develop assessment plan. Sec. 1415 (k)(1)(B); Reg. 300.520(b)(1)(i). (As soon as practicable after the assessment, the IEP Team must meet again to develop and implement the behavior intervention plan. Reg. 300.520(b)(2)). The IEP Team and other qualified personnel must review the relationship between disability and the behavior subject to disciplinary action (manifestation determination review-MDR). Sec. 1415(k)(4)(A); Reg. 300.523(a)(2), (b).

The 45 day alternative interim placement must:

- enable student to progress in general curriculum, although in another setting;
- enable the student to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP; and
- include services and modifications designed to address the drug or weapon offense so that it does not recur. Sec. 1415(k)(3)(B); Reg. 300.522; Reg. 300.121(d)(2)(ii).

Comments to regulations: Student may be subject to multiple 45 day interim placements for separate drug and weapon offenses. The 45 day interim placement may be completed even if drug or weapon offense was manifestation of disability. If misbehavior was not a manifestation of disability, regular disciplinary consequence can be applied in addition to 45 day interim placement.

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For the MDR, the IEP Team must look at all information relevant to the behavior subject to discipline such as evaluation and diagnostic results, including such results and other relevant information from the parent, observations of the student and the student's IEP and placement. The misbehavior is not a manifestation of the disability if the IEP Team finds that in relationship to the misbehavioc subject to discipline.

- the IEP and placement were appropriate;
- consistent with the content of the student's IEP and placement, special education services, supplementary aids and services and behavior intervention strategies were actually provided;
- the disability did not impair the ability of the student to understand the impact and consequences of the misbehavior; and
- the disability did not impair the ability of the student to control the misbehavior.

Sec. 1415(k)(4)(C); Reg. 300.523(c).

If the IEP Team determines any of the standards were not met, the misbehavior was a manifestation of the disability, and no punishment may be assessed. Reg. 300.523(d). If IEP Team identified deficiencies in IEP, placement, or implementation, it must take immediate steps to remedy. Reg. 300.523(f).

-or -

If the IEP Team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student except that the student must continue to be provided a free appropriate public education. Sec. 1415(k)(5)(A); Sec. 1412(a)(1)(A). Reg. 300.121(a); Reg. 300.524(a). The campus must ensure that special education and disciplinary records are transmitted for consideration by the school district person making the final determination regarding the disciplinary action. Sec. 1415(k)(5)(B); Reg. 300.524(b).

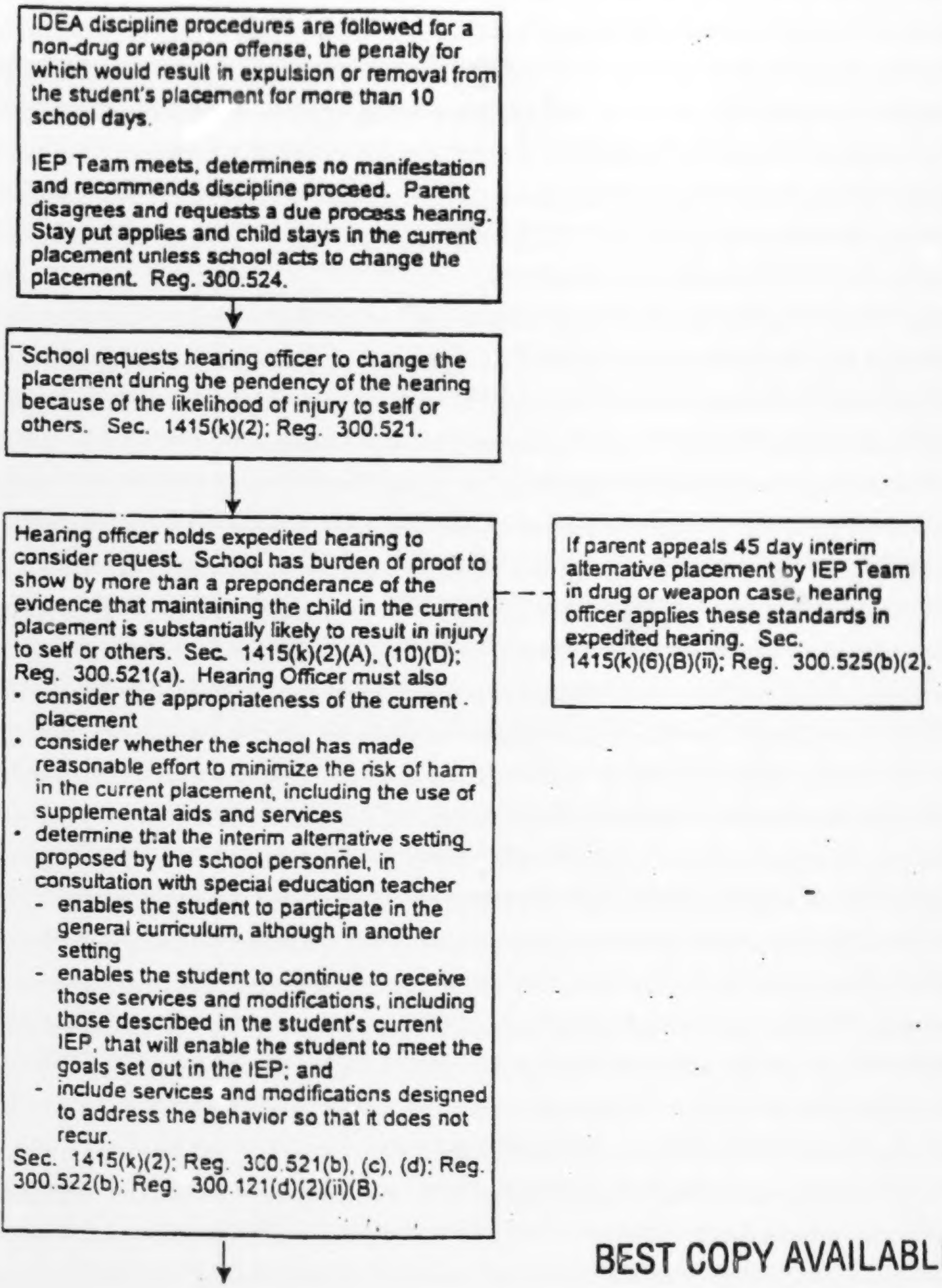
Parent may appeal a finding that the misbehavior was not a manifestation of the disability. The hearing is expedited before a special education hearing officer who applies the same standards as the IEP Team. Sec. 1415(k)(6); Reg. 300.525(a), (b).

Parent may appeal decision to place student in 45 day interim placement. The hearing is expedited before a special education hearing officer who applies the standards regarding a dangerous student in Reg. 300.521. Sec. 1415(k)(6)(B)(ii); Reg. 300.525(b)(2).

When a parent requests a hearing in a drug or weapon case to challenge the interim alternative placement or the manifestation determination, student remains in interim placement until decision of hearing officer or 45 days expires, whichever comes first unless the parent and school agree otherwise. Reg. 300.526(a). Then student returns to current placement (defined as placement prior to interim alternative educational setting). School can ask for expedited hearing before special education hearing officer to prevent this return if the student is substantially likely to injure self or others. Reg. 300.526(b), (c). The hearing officer applies the standards in Reg. 300.121. Reg. 300.526(c). Hearing officer can order another placement for up to 45 days. Reg. 300.526(c)(3). This procedure may be repeated as necessary. Sec. 1415(k)(7); Reg. 300.526(c)(4).

The standard the educational services must meet is that they enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(B); Reg. 300.524(a). The IEP team must determine what services are necessary to meet this standard. Reg. 300.121(d)(3)(ii).

Chart 4
Students Dangerous to Self or Others
(Revised)



IDEA discipline procedures are followed for a non-drug or weapon offense, the penalty for which would result in expulsion or removal from the student's placement for more than 10 school days.

IEP Team meets, determines no manifestation and recommends discipline proceed. Parent disagrees and requests a due process hearing. Stay put applies and child stays in the current placement unless school acts to change the placement. Reg. 300.524.

School requests hearing officer to change the placement during the pendency of the hearing because of the likelihood of injury to self or others. Sec. 1415(k)(2); Reg. 300.521.

Hearing officer holds expedited hearing to consider request. School has burden of proof to show by more than a preponderance of the evidence that maintaining the child in the current placement is substantially likely to result in injury to self or others. Sec. 1415(k)(2)(A), (10)(D); Reg. 300.521(a). Hearing Officer must also

- consider the appropriateness of the current placement
- consider whether the school has made reasonable effort to minimize the risk of harm in the current placement, including the use of supplemental aids and services
- determine that the interim alternative setting proposed by the school personnel, in consultation with special education teacher
  - enables the student to participate in the general curriculum, although in another setting
  - enables the student to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in the IEP; and
  - include services and modifications designed to address the behavior so that it does not recur.

Sec. 1415(k)(2); Reg. 300.521(b), (c), (d); Reg. 300.522(b); Reg. 300.121(d)(2)(ii)(B).

If parent appeals 45 day interim alternative placement by IEP Team in drug or weapon case, hearing officer applies these standards in expedited hearing. Sec. 1415(k)(6)(B)(ii); Reg. 300.525(b)(2).

If all requirements are met, hearing officer may order a change of placement to the interim alternative educational setting for up to 45 days. Sec. 1415(k)(2); Reg. 300.521.

↓

Student returns to his or her current placement (the placement prior to the interim alternative educational setting) at end of 45 days if no decision has been issued by hearing officer in pending due process hearing. If school believes it would be dangerous for student to return to current placement while hearing is still pending, school may request another expedited hearing to again place student in 45 day interim placement while hearing continues to be pending. Reg. 300.526(b), (c)(4). Hearing officer holds same type of hearing initially held when hearing officer ordered first 45 day interim placement. Sec. 1415(k)(7); Reg. 300.526. Any subsequent 45 day interim setting must meet the standards in Reg. 300.522.

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